

Gladue Through wahkotowin:
Social History Through
Cree Kinship Lens
in Corrections and Parole

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ABSTRACT

This thesis explores the *R. v. Gladue* (1999) decision and whether it is applicable to federal corrections and parole release. I outline a Cree relational approach—*wahkotowin*—that can be employed as a *Gladue* method of analysis to help us understand Cree history through a kinship relational lens. In Chapter 1, I share an overview of the teachings of *wahkotowin*, as taught by knowledge keeper and respected author Maria Campbell. With the help of her circle teachings diagrams, I outline our relationships and obligations to one another. I also outline the shattering of *wahkotowin* through imposed colonial and present-day policies, programs, and legislation, and the resulting inherited intergenerational trauma. Chapter 2 locates my personal story, exploring family and community history, and its connection with First Nations and Métis history on the prairies. Chapter 3 reviews the Supreme Court of Canada’s *R. v. Gladue* and *R. v. Ipeelee* (2012) decisions, the duty to properly consider the unique social history of Aboriginal peoples, and the applicability of *Gladue* to section 84 of the *Corrections and Conditional Release Act*. Chapter 4 outlines the qualitative data, including interviews with legal experts working with Aboriginal Legal Services of Toronto and the Gladue Court. The data explore best practices of interviewing, researching, and report writing necessary for obtaining *Gladue* evidence. In Chapter 5, I propose a *Gladue*-through-*wahkotowin* approach that explores how *Gladue*’s duty to consider social history evidence can be expanded to all phases of the criminal justice system, from sentencing to parole release, and can include a Cree relationship-based way of interviewing an offender, carrying out in-depth family and community interviews, attaining oral and documentary historical research, and applying a broad Indigenous approach to interviewing and the writing of Gladue Reports.

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LIST OF ABBREVIATIONS

ACDO: Aboriginal Community Development Officer

ALO: Aboriginal Liaison Officer

ALST: Aboriginal Legal Services of Toronto

CCRA: *Corrections and Conditional Release Act*

CSC: Correctional Service Canada

IPO: Institutional Parole Officer

NPB: National Parole Board

PBC: Parole Board of Canada

PSR: Pre-Sentence Report

RCAP: The Royal Commission on Aboriginal Peoples

SCC: Supreme Court of Canada

INTRODUCTION

*R. v. Gladue*¹ was a celebrated Supreme Court of Canada decision that offered a new framework for analyzing and responding to cases involving Aboriginal peoples. Jamie Tanis Gladue is a young Cree Métis woman originally from Treaty 8 territory in the province of Alberta. Within one month of the incident that changed her family's life, Jamie had moved to Nanaimo, British Columbia along with her common-law partner, her father, and several of her siblings. On the evening of her nineteenth birthday, Jamie Gladue was charged with manslaughter in the death of her common-law partner.

At the heart of *Gladue*² was a call to find solutions to the over-incarceration of all offenders in Canada, including Aboriginal offenders. The decision held out a duty to appropriately implement Section 718.2(e) of the *Criminal Code*, which reads:

A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.³

The decision stated that the “circumstances of aboriginal people are unique,”⁴ and that the judge must consider two main principles when sentencing an Aboriginal offender:

- (A) The unique systemic and background factors which may have played a part in bringing the particular aboriginal offender before the courts; and
- (B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection offender.⁵

¹ *R v Gladue* (1999), 1 SCR 688, 133 CCC (3d) 385, 23 CR (5th) 197 [*Gladue* cited to SCR].

² *Gladue* is italicized throughout this thesis with the exception of references to Jamie Gladue and the Gladue (Aboriginal persons) Court in Toronto, as well as the caseworkers at Aboriginal Legal Services of Toronto (ALST) and the reports that they create.

³ *Criminal Code*, RSC 1985, c C-46, s 718.2(e) [*Criminal Code*].

⁴ *Gladue*, *supra* note 1 at para 66.

In order to properly choose alternative community sentences, *Gladue* requires decision makers to first consider the unique social history of Indigenous peoples. The thesis will focus on this first duty of *Gladue*—to properly consider the social history of each Aboriginal person.

More specifically, the thesis will focus on the *Nehiyow*,⁶ or Cree, worldview, *wahkotowin*.⁷ *Wahkotowin* is both a worldview and an Indigenous law⁸ that explains the reciprocal good relationships with Creator, creation, and one another. Using *wahkotowin* as a method of analysis, the thesis will explore how the legal duties outlined in the Supreme Court of Canada’s *Gladue* decision can best be operationalized within the federal corrections and parole system, with specific concentration on the early release and reintegration of offenders. The thesis will focus on Section 84 of the *Correctional and Conditional Release Act*,⁹ and will contemplate how *Gladue*’s social history requirement can best be applied in the early release process through the lens of *wahkotowin*.

The thesis will conclude with a suggested Indigenous approach that applies a *wahkotowin* framework of analysis to the *Gladue* inquiry, one that can be applied at sentencing, corrections, and parole release. This approach sets out principles for successful methods of interviewing, a

⁵ *Ibid.*

⁶ In the Cree language, *Nehiyow* is a word that connotes Cree peoples, signifying a large nation of Indigenous peoples who often speak the Cree language and live the Cree way of life in territories in present-day North America.

⁷ Harold Cardinal & Walter Hilderbrandt, *Treaty Elders of Saskatchewan: Our Dream is that Our Peoples will One Day be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000) [Cardinal] (this book speaks aptly about *wahkotowin* as a *Nehiyow* law and worldview that explains our obligation to maintain reciprocal good and proper relationships with Creator, creation, and one another at 34).

⁸ I honour and respect the contributions of Indigenous legal scholars, especially those who have published books, taught courses, and acknowledged Indigenous laws and worldviews, including Professor Sakej Henderson, Professor John Borrows, Dr. Mary-Ellen Turpel-Lafond, the late Professor Patricia Monture, Professor Val Napoleon, legal scholar Wanda McCaslin, Dr. Tracey Lindberg, legal scholar Sylvia McAdam, Dr. Winona Stevenson and other Indigenous scholars who are courageously bringing Indigenous ways of being, healing, and making peace and justice to a larger audience.

⁹ *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA].

Cree-inspired way of analyzing *Gladue* social history factors, and unique *Gladue* report-writing techniques. It is only when we see the destructive intergenerational effects, due to both formal and informal¹⁰ laws, legislation, and policies, and how each concentric *wahkotowin* circle—children, old ones, women, and men—was brutally shattered, that we can better understand the life story and generational inheritance of Indigenous societies. Using the *wahkotowin* framework, we begin to understand the impact that the colonial regime had on Indigenous nations, communities, and families, and individuals. Understanding *Gladue* through a *wahkotowin* framework can guide us in properly conducting individual, family, and community interviews, and in researching and writing a comprehensive Gladue Report.

Knowing my own history has been instrumental in this research. Knowing who I am as a Métis woman and understanding how my individual experience is intricately related to my family and community history, I better understand how historical intergenerational trauma has had a direct impact on Indigenous families. I identify as a Métis woman, with Scottish, Cree, and Saulteaux maternal heritage. I also honour my paternal Italian relatives. The relatives and ancestors on my maternal grandfather's side come from the Red River country. My family belonged to the Scots Halfbreed¹¹ community of St. Andrew's, Manitoba, one of many Scots

¹⁰ See, especially, Canada, *Report of the Royal Commission on Aboriginal Peoples, Looking Forward, Looking Back*, vol 1, "9.10 Pass System" (Ottawa: The Commission, 1996) at 296 [RCAP, Pass System]; F. Laurie Barron, "A Summary of Federal Indian Policy in the Canadian West 1867–1984" (1984) 1:1 Native Studies Review at 28 [Barron]. Informal policies were imposed upon Indigenous peoples, such as the pass system that was imposed on the Prairies in the late 1800s. The pass system controlled the movement of Indian peoples, forcing them to obtain a pass from an Indian agent to gain permission to temporarily leave the reserve. The pass system had many ulterior functions, but was used predominately as a control mechanism, to supervise where people were going and exactly how long they could be gone from the reserve.

¹¹ The term "Halfbreed" was often used in the 1800s and early 1900s to identify those Métis people of Scottish and either Cree or Saulteaux ancestry. While many people in 1800s and early 1900s used the term to identify themselves, it was also used pejoratively by non-Métis. Some Métis people have taken the word back with a sense of pride, while others still feel an aversion to the term due to the verbal or physical harassment they associate with the

Halfbreed and French Métis communities dotted along the river country surrounding what is now Winnipeg. During the Halfbreed and Métis dispersals from Red River in the 1870s and 1880s, my family moved to a small settlement located on the South Saskatchewan River, near St. Louis, Saskatchewan. My Halfbreed grandfather left St. Louis to fight in World War II, returning to live, marry, and raise his family in Prince Albert, Saskatchewan.

Growing up in Prince Albert, a community of Métis, First Nations, and European immigrant families, race and class tension was a common reality. Sheltered by a white-skinned face and a more privileged upbringing than many of my Métis and First Nations relatives, I escaped the pain of being harassed or ignored, or of experiencing more overt and direct episodes of violence. Witnessing the abuse and terror against my relatives, however, was heart wrenching. As a young person, I felt helpless not knowing how to change this injustice and social reality.

Prince Albert houses a number of provincial jails and a federal penitentiary. The community is divided between non-Indigenous¹² jail employees and incarcerated Indigenous inmates. Jailing Native people is the community's business, one that is miserably failing Indigenous peoples. It was this reality that led to my interest in improving restorative and Indigenous-led healing options as a response to criminalized behaviours.

term. Furthermore, at the time of the 1800s and early 1900s, French-Catholic Métis peoples identified themselves as "Métis" or "Michif," whereas English-speaking Anglican Métis regarded themselves as Halfbreed peoples.

¹² At times within the thesis, I will use the term "Indigenous peoples" to recognize our connection and relationship with Indigenous nations around the world, and to acknowledge our often-similar colonial heritage and common holistic worldviews. When referring to federal policies in Canada, I will sometimes use the term "Aboriginal peoples" to follow the same terminology as the Canadian Constitution, which recognizes the rights of Indian, Métis, and Inuit peoples as "Aboriginal peoples" in Canada. When referring to First Nations peoples in Canada, I may use the words, "Native," "Indian," or "First Nations" to recognize all terms of common usage in Canada to explain status Indian or First Nations peoples. When referring to Métis peoples and history, I will explicitly state that I am referring to Métis history. Where possible, I will mention the specific names of Indigenous nations. Also when possible, I will use Cree or *Nehiyow* terminology to recognize that each nation has a different language and unique cultural traditions that may differ significantly with a *Nehiyow* worldview.

Epistemology

Honouring our connections to all our relations, *wahkotowin* is a way of being and living *nehiyawiwon*,¹³ a way of maintaining our Cree culture and way of life.¹⁴ O'Reilly-Scanlon, Crowe, and Weenie¹⁵ used *wahkotowin* as a research methodology, referencing the ideas of Cree author, Willie Ermine:

“Wahkohtowin,” a Cree word meaning kinship or the state of being related, is a fundamental concept for understanding Indigenous culture and traditional beliefs because it highlights the importance of community.¹⁶

The Nature's Laws Project,¹⁷ as set out by Chief Roan and Waugh, takes the concept of *wahkotowin* further, speaking of relationships and our sense of belonging:

Generally speaking, in Cree, the word *Wahkohtowin* expresses the notion of an overarching law of respect and belonging. One belongs, first and foremost, to the sacred order of things laid down by the first Creator. One also belongs as a member of the family of the first ancestor, so the work could equally be used to describe “*descendant*.”¹⁸

¹³ Neal McLeod, *Cree Narrative Memory: From Treaties to Contemporary Times* (Saskatoon, SK: Purich Press, 2007) [McLeod] at 13.

¹⁴ Within this thesis, when I refer to *wahkotowin* and Cree ways of living and being, I include Cree as part of my Métis identity. Similar to many other Métis families, I connect with Cree values and ways of being in the world. I am, however, very much aware of the distinctions between a legal identity and a cultural identity. I may legally be Métis under the Constitution, yet culturally identify with my Cree and Saulteaux relatives. I recognize that a number of Cree relatives do not identify as Métis, while other Métis relatives do not identify as Cree. A number of Cree people are legally designated as “Indian” under the Constitution and identify with the modernized term of First Nations. I merely want to point out that through inter-marriage and the gaining of new relatives, many people, such as myself, identify with both Cree and Métis values and culture, and do not separate or differentiate the two as they are intricately connected as part of our matrilineal ancestral lineage and culture.

¹⁵ Kathleen O'Reilly-Scanlon, Christine Crowe & Angelina Weenie, “Pathways to Understanding: ‘Wahkohtowin’ as a Research Methodology” (2004) 39 McGill Journal of Education 463 [O'Reilly-Scanlon].

¹⁶ *Ibid* at 30 (attributed to a personal communication with Cree scholar Willie Ermine).

¹⁷ Chief Wayne Roan & Earle Waugh, “Nature's Laws Project—Relationships,” online: (2004) Heritage Community Foundation Alberta Online Encyclopedia <http://www.abheritage.ca/natureslaws/culture/relational_relationships.html> [Roan]. The Nature's Laws Project was a partnership between the Heritage Community Foundation and representatives of First Nations from Treaty 6, 7, and 8. The objective of the project was to study the pre-contact legal codes and traditional governance of First Nations in Alberta.

¹⁸ *Ibid*. Emphasis in original.

Roan and Waugh further stated that “[g]overnment is also held to be part of *wahkotowin*, and it is the responsibility of those in power to adhere to Nature’s Law in their dealings with the community”¹⁹ by reminding community members to govern themselves in a good way.

Maria Campbell, Cree-Métis cultural teacher and author, added depth and practical simplicity to the understanding of the laws of *wahkotowin*:

There is a word in my language that speaks to these issues: “wahkotowin.” Today it is translated to mean kinship, relationship, and family as in human family. But at one time, from our place it meant the whole of creation. And our teachings taught us that all of creation is related and inter-connected to all things within it. Wahkotowin meant honouring and respecting those relationships. [It was] our stories, songs, ceremonies, and dances that taught us from birth to death our responsibilities and reciprocal obligations to each other. Human to human, human to plants, human to animals, to the water and especially to the earth. And in turn all of creation had responsibilities and reciprocal obligations to us.²⁰

A number of scholars, including Calvin Martin in his book about human and animal relations,²¹ supported Campbell’s statement that all of creation holds reciprocal responsibilities and obligations to human beings.

Cree scholar and author Neal McLeod clearly outlined *wahkotowin* as a holistic kinship system and connected this practice with collective memory. He wrote that to know our stories is to know our Cree relationships and way of being:

Kinship, *wahkohtowin*, grounds the collective narrative memory within *nehiyawiwinn* [Cree-ness]. There are important relationships not only among human beings, but also with the rest of creation. *wisahkecahk*, the elder brother (mistakenly called the “trickster” by many), is perhaps the most vibrant demonstration of the importance of relationships

¹⁹ *Ibid.*

²⁰ Maria Campbell, “We Need to Return to the Principles of Wahkotowin”, online: (2007) 10:11 Eagle Feather News 5 <<http://aborigin.sasktelwebhosting.com/Resources/November-2007.pdf>>. The information provided in the quote was also confirmed by a number of in-person interviews with Maria Campbell throughout 2010–2011.

²¹ Calvin Martin, *Keepers of the Game: Indian-Animal Relationships and the Fur Trade* (Berkeley, CA: University of California Press, 1978).

and the fluid line between humans and animals, *wahkohtowin* keeps narrative memory grounded and embedded within an individual's life stories.²²

Wahkotowin as a way of life and as an intricate web of relationships within creation holds an important role in the healing, decolonization, and integration process for our relatives.

Methodology

This qualitative study is exploratory in nature, based on face-to-face interviews with five Gladue Court legal experts, and face-to-face interviews with several Indigenous knowledge keepers. I chose one knowledge keeper, Maria Campbell, as my primary cultural teacher, and made a commitment to visit with her throughout 2010–2012 to learn more about Indigenous laws of reciprocal relationships (i.e., *wahkotowin*). As I will explain in Chapter 2, part of the commitment that I made when beginning to learn about all “my relations”—both human and non-human—was a commitment to elders, their teachings, and the ceremonies. Part of my personal journey included committing first to the sweat lodge ceremony in order to cleanse physically, emotionally, mentally, and spiritually. I continued learning in this ceremony for eight years before deciding to commit to other spiritual ceremonies and responsibilities, such as fasting ceremonies and sundance ceremonies.

Maria is a well-respected storyteller and filmmaker who commits her time to teaching young people about our history, cultural teachings, and ceremonies, including the teachings of family and the laws of *wahkotowin*. She has worked with, and has long been involved in, justice, community, and family healing projects, and has also taught Indigenous history, culture, and

²² McLeod, *supra* note 13 at 14.

literature at the University of Saskatchewan. Maria has also taught at First Nations University and Brandon University, and is still affiliated with Athabasca University. She has a clear understanding of how Indigenous families and communities have been broken. When I met Maria in 1996, I was at the beginning of a long journey of learning about traditional teachings. In 2005, I presented tobacco and gifts to Maria, asking her to be my cultural teacher. After several years and under her guidance, I began participating in a fasting ceremony. I also presented Maria with tobacco and an offering to ask her to guide me in learning more about *wahkotowin* for the purpose of this thesis research.²³

As we visited, I chose not to digitally record these interviews in order to respect a more customary Cree way of learning. I did, however, take notes during some of our visits, which we reviewed for accuracy. Maria also used circle diagrams, explained further in Chapter 1 and Chapter 2, given to her by her teacher, the late Peter O'Chiese, to help her share the teachings. The figures of the intact circle and the broken circle (Figures 1 and 2) are used by Maria to guide students who are learning about Cree worldview and *wahkotowin*. She is clear, however, that the diagrams were not the way that our ancestors were previously taught about our ways. Nevertheless, the circle diagrams serve as a useful tool for those who have not learned about the cultural ways as children to begin to understand Cree ways of thinking, being, and living in world.

²³ The bulk of my visits and interviews with Maria took place between 2010 and 2012. Some of the teachings were shared with me over several visits, and some were often shared several times. For this reason, I state specific visit dates for teachings where possible, while in other cases I do not feel it appropriate to pinpoint a specific interview date.

***Gladue* Legal Expert Interviews**

In May 2010, I contacted via telephone the Program Director of Aboriginal Legal Services of Toronto [ALST], Jonathan Rudin, at the main office in downtown Toronto, Ontario. Two Gladue Caseworkers, Leslie King, and Kika' Mowry, along with Rudin, agreed to set up interview times to answer the research questions. Rudin also recommended that I speak with Crown Prosecutor Fred Bartley, who has worked with the Gladue Court since its inception, as well as defence lawyer Dan Johnson, who had worked for a lengthy time with the Gladue Court. All five *Gladue* experts—each holding a law degree—were interviewed concerning their expertise and intimate involvement with the inaugural Gladue Court in Canada.

The interview with Bartley could be described as a pre-interview, for it was brief and, due to scheduling conflicts, I was able to meet with him on only one occasion. His expertise, however, proved invaluable to understanding the daily practice of the Gladue Court, especially in terms of how the prosecution, at specified Gladue Courts, takes the time to give greater consideration to the social history of Aboriginal offenders, as required by the *Gladue* decision. The Program Director, two Gladue Caseworkers, and the defence lawyer interviews were each recorded on a digital audio device; the Crown prosecutor's interview was not digitally recorded, but included field notes. Reading over each transcribed interview, themes and important operational recommendations emerged that honoured the *Gladue* decision.

The bulk of the interviews took place from August 2010 to May 2011. Each expert signed a consent form that was approved by the University of Saskatchewan Behavioural Ethics Committee. A copy of the consent form is attached in Appendix A.

Thesis Chapters

Chapter 1 outlines how the Cree laws of *wahkotowin* are directly connected to reciprocal responsibilities and obligations with all our relations and each other. I am only at the beginning of this learning process, and so it should be understood that the Indigenous knowledge shared in the thesis is explained at a primary level. Chapter 1 also outlines, in a concentrated fashion, the breakdown and shattering of *wahkotowin*, showing how family and community kinship laws broke down as a result of destructive colonial and Canadian laws and programs, with deleterious effects on our families, communities, and nations.

Chapter 2 follows the Indigenous research tradition of “locating” the researcher both in place and the research topic, and guides the reader to better understand the Indigenous epistemology and methodology of *wahkotowin*.²⁴ In a first-person narrative, I ground myself in place, and in my connections to the land, community, and family. I contemplate how *wahkotowin* was shattered in my own family and how, through the help of elders and ceremonies, I became healthy once again.

Chapter 3 introduces the Supreme Court’s *R. v. Gladue* decision and argues its application to Section 84 of the *Corrections and Conditional Release Act*. I outline the legislative background and key holdings of the *Gladue* decision, which instructs decision makers to consider the social history of Aboriginal peoples and give proper weight to community and

²⁴ Kathy Absolon & Cam Willett, “Putting Ourselves Forward: Location in Aboriginal Research” in Lesley Brown & Susan Strega, eds, *Research as Resistance: Critical, Indigenous, & Anti-Oppressive Approaches* (Toronto, ON: Canadian Scholars Press, 2005) at 97 [Absolon].

restorative justice options. I explore *R. v. Sim* (2005),²⁵ an Ontario Court of Appeal decision that considers *Gladue*'s application to decisions affecting the reintegration of Aboriginal offenders. I then examine and analyze whether the decision puts legal weight on corrections and parole to fully gather *Gladue* evidence and apply *Gladue* principles to all correctional decisions, especially those decisions relating to the early release of federal Aboriginal offenders.

Chapter 4 includes themes arising from the *Gladue* legal expert interviews. The data is grouped into themed areas that explore potential best practices for conducting *Gladue* interviews and writing Gladue Reports. This data includes quotes from the two Gladue Caseworkers, Leslie King and Kika' Mowry, ALST Program Director Jonathan Rudin, and defence lawyer Dan Johnson. Themes emerged around the importance of telling a person's life story by including family and community information, as well using historical documentary evidence that details the detrimental laws targeted against Indigenous peoples in Canada and the damaging effects stemming from those laws.

Chapter 5 presents the application of a *Gladue* through *wahkotowin* approach, with the introduction of a proposed holistic *Gladue* implementation plan that can be applied broadly to the criminal justice system. Chapter 5 explores a Cree approach that envisions how *Gladue* can be best operationalized during a federal offender's release and parole process via a *wahkotowin*-based worldview. I suggest an approach that applies a *wahkotowin* methodology to the operationalization of *Gladue*, and provide CSC and PBC officials with a workable Cree approach to collect and document *Gladue* social history evidence for Cree offenders. I specifically apply

²⁵ *Sim v Ontario (Review Board)* (2005), 201 CCC (3d) 482, 78 OR (3d) 183, 203 OAC 128, *sub nom. R v. Sim* (CA) [Sim].

this approach to Section 84 of the *CCRA*, a policy designed to offer early release community planning protocols to Aboriginal federal offenders. Recommendations are offered in the areas of 1) client interview; 2) family/ community contacts; 3) historical research; and 4) Gladue Report writing. I suggest that a *wahkotowin* methodology can provide a viable operational plan for CSC and PBC to properly implement the Supreme Court's *Gladue* decision, especially when considering community release and reintegration decisions for Cree offenders. I recommend the hiring of Gladue teams—including elders, caseworkers, supervisors, and aftercare workers—to implement the Cree-inspired methodology within each correctional region, especially within the Prairie region, where a new vision could become a reality.

CHAPTER 1

WAHKOTOWIN: HONOURING OUR RELATIONS

I have spent a number of years²⁶ with my teacher and mentor, Maria Campbell, and she has shared stories and teachings using the circles as a way to more easily help me understand the laws of *wahkotowin*. Maria learned from her teacher and she shared with me.

My teacher told me that it is our work to help our people, in particular the young ones, find their way home. We are sick because of the shattering of *wahkotowin*. When we start to understand what we had, and we still have, we begin to heal. The healing is knowledge. It is not a magic medicine; it is about knowing what we had and how it was shattered. This is not how we were taught in the past—back then, even when I was a child, we learned this over a lifetime. We learned by living it. We learned by hearing stories and songs from birth to death. We learned by being a part of normal everyday rituals that observed responsibilities, obligations and protocols to each other and the world we lived in. We learned in the way we took from the land and environment and we learned in the way we prepared the food they gave us.²⁷

Maria taught me about the circle teachings through the use of two circle diagrams, an intact circle and a broken circle, which illustrate four interrelated circles. Using these circle teachings, she shared with me the larger intent of *wahkotowin*: “With these circles, I try to show you what we had when our people, and our communities were stable and healthy.”²⁸ She also reminded me that we cannot go back to that same place because culture evolves, but we can use the circle teachings as a map to learn the old ways.²⁹

²⁶ I began visiting with Maria in 1996 and was already learning many life lessons and teachings from her throughout 1996–2005. In 2005, I presented tobacco to Maria to become my cultural teacher. In 2010, I again presented to Maria tobacco and gifts to specifically visit with her and learn more about *wahkotowin*, both for the purposes of this thesis and to grow as a human being. For that reason, I will footnote Maria’s teachings about *wahkotowin* as “visits” and will often footnote the date as “2010–2012” to acknowledge that many of these stories and teachings were repeated over a number of visits throughout the last few years.

²⁷ Visit with Maria Campbell (15 February 2010) Saskatoon, Saskatchewan.

²⁸ *Ibid.*

²⁹ *Ibid.*

The knowledge held within the circles is presented below in a very condensed manner. It represents a worldview in which governance, the values of our people, the taboos, the laws, the responsibilities, the obligations, and the protocols are embedded. Within our governance structures, our lives were stable and balanced. We knew who we were and we knew how to live a good life—*miyo pimatisiwin*.³⁰ Young people were guided to the good life by the elders, the old ones, and were helped to realize their gifts and purpose on earth. Everything in our world was, and still is, interconnected and mutually dependent according to the teachings of the old ones. We upheld the law of reciprocity between humans and all of creation.

Historical European worldviews throughout settler contact often clashed directly with the worldviews of Indigenous nations across the Americas.³¹ Europeans were immersed in an imperialistic and patriarchal society that controlled women and children as property.³² The notion of owning and devaluing family members contrasted with worldviews that promoted the respect for, and honour given to, each family member, including respect for the autonomy and self-determination of women and children.³³ The destruction of our relationships within our families, along with the continued destruction of the earth, plants, waters, and animals, constitutes one of the greatest breaches of *wahkotowin*.

³⁰ Cardinal, *supra* note 7 at 43. In the Cree language, *pimatisiwin* means life, while *pimacihowin* refers to the ability to make a good living. The concept of *miyo pimatisiwin* is connected with the concepts of making one's living, living a good life physically, emotionally, mentally, and spiritually, and the concept of conducting ourselves through our gifts provided by the Creator.

³¹ See especially Leroy Little Bear, "Jagged Worldviews Colliding" in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision* (Vancouver: University of British Columbia Press, 2000) at 77.

³² See generally, Ann McGrath & Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia" (1996) 71 *Labour History* at 37.

³³ *Ibid.*

A number of European nations, including England, France, Spain, and Portugal, participated in the era of imperialism and economics within the Americas, and were directly and indirectly connected to brutal, violent, and destructive incursions against Indigenous peoples.³⁴ When the Europeans arrived in the Americas, Indigenous ways and laws of relating with their kinship relatives were looked upon as completely savage and pagan. In many cases, Indigenous peoples were viewed as sub-human and without souls.³⁵ Furthermore, Maria pointed out that early European missionaries and explorers had a skewed view of Indigenous families:

The Jesuits write about the love our people had for their children. They are very scornful about it, saying children were free to do as they pleased. They said that there was no discipline because they never saw children being punished in the way that they punished or disciplined their own children.³⁶

As Maria explained, Indigenous children were treated with love and gentleness by their relatives. There was discipline, but it was taught in a different way—through the laws, responsibilities, and reciprocal obligations of *wahkotowin*.

Inter-relationships

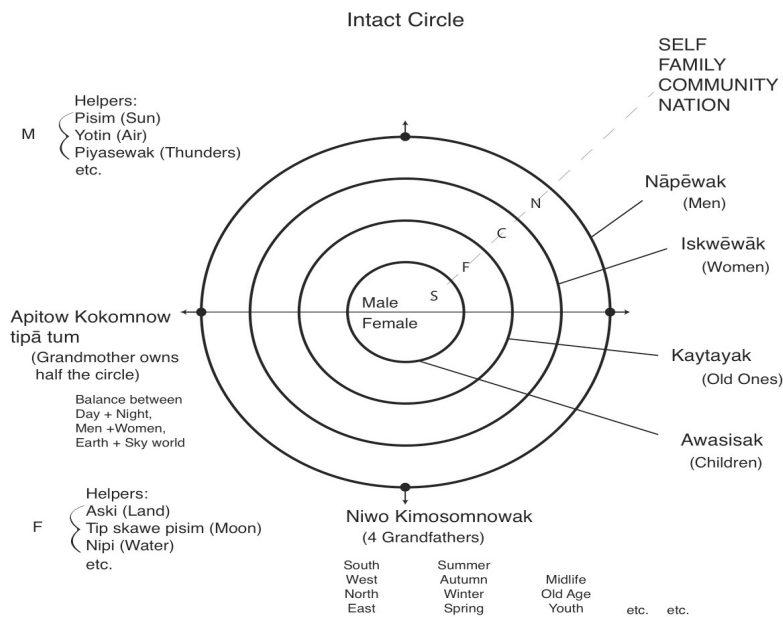
In learning about the simplicity and complexity of all our relationships within creation, I was challenged to think in a different way, a way that is not linear or divided into separate boxes. Our world is interconnected and interrelated. I learned about the medicine wheel and the connection between each direction, each season, and the animals connected to each cardinal direction. I also learned about looking at the circle to understand human health and wellness

³⁴ See generally, Christopher Tomlins, “The Legalities of English Colonizing Discourses of European Intrusion upon the Americas, c. 1490–1830” in Shaunnaugh Dorsett & Ian Hunter, eds, *Law and Politics in British Colonial Thought: Transpositions of Empire* (New York, New York: Palgrave Macmillan, 2010) at 51.

³⁵ See generally, Albert Memmi, *The Colonizer and the Colonized* (Boston, Massachusetts: Beacon Press, 1965).

³⁶ Visit with Maria Campbell (30 March 2012) Ottawa, Ontario.

from a physically, emotionally, mentally, and spiritually holistic viewpoint. However, the *wahkotowin* teachings remind us that we must acknowledge our reciprocal kinship relationships, responsibilities, and obligations to our circle of relatives—including children, old ones, women and men—and how each individual person is related and holds obligations to their family, community, and nation. Through my teacher’s “Intact Circle” teachings, depicted in Image 1, I will outline the four interrelated circles of *awasisak* (children), *kaytayak* (old ones), *iskwewak* (women), and *napewak* (men), and also explain the four directions, the male and female balance, the seasons, and the reciprocal relationships between self, family, community, and nation.



These teachings follow this image (when we were healthy and our lives were intact).

Image 01

© M Campbell 1986

Awasisak

As I began to understand more about the connections between the family realms, I came to first understand our obligations to, and relationships with, children—*awasisak*. Maria teaches that our children are represented in the innermost circle of the “Intact Circle” image. Children are the most treasured and precious beings in our world. Children are considered our future and, as we have learned through the historical forced transfer of children to residential schools,³⁷ foster care, and adoption placements,³⁸ there is no future for a people if there are no children. It is important to remember that children are the inheritors in our culture. Children inherit everything that they will use in life, including the teachings, values, and traditions from their family, community, and nation. We must always remember that how we live and what we teach our children is inherited by the next seven generations of our peoples. Within this worldview is the connected belief that it will take seven generations to fully heal all the painful and horrendous intergenerational trauma imposed upon our family kinship relations.³⁹

Maria related to me how each part of the interrelated circles, including *awasisak*, carries specific responsibilities and obligations. She described *awasisak* as a “word bundle”⁴⁰ that

³⁷ See especially John Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986* (Winnipeg, MB: University of Manitoba Press, 1999) [Milloy].

³⁸ Nico Tromé, Della Knoke & Cindy Blackstock, “Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System” (2004) 78:4 Social Service Review 577 at 578 [Tromé].

³⁹ Lynn F. Lavalley & Jennifer M. Poole, “Beyond Recovery: Colonization, Health and Healing for Indigenous Peoples in Canada” (2010) 8:2 Int J Ment Health Addiction 271 at 273 [Lavalley].

⁴⁰ As Maria explained, we have to picture that each word within the circle teachings contains a “bundle” or a sort of package. The package or bundle for *awasisak*, for example, contains layers and layers of sacred teachings, stories, songs, ceremonies, taboos, all of which are related to honouring and respecting our reciprocal obligations to children.

encompassed the gifts, teachings, ceremonies, songs, and stories that were a part of a child's healthy and good life:

The word for child/children is *awasis/awasisak*. Now imagine that *awasis* is carrying a bundle. Inside that bundle are ceremonies and rituals that belonged to them—birthing ceremonies and rituals, birthing songs and stories, naming ceremonies, “Walking Out” ceremonies, etcetera, etcetera—everything in the life of a child was celebrated by family and community. Imagine the sense of self a little one would have with that kind of family and community support and that kind of celebration for that child's birth and life.⁴¹

This teaching helps us to better understand the honour and respect given to children and reminds us of the importance of our daily interactions with them, and the importance of each of the related circle teachings.

Kaytayak

Encircling *awasisak* are the old ones—*kaytayak*—who represent our past. The old ones were the teachers and keepers of knowledge. Maria aptly compared the old ones to being like archives, libraries, and universities. They passed on the stories and teachings to the children whom they took care of while their parents worked to protect and provide for them. *Kaytayak*, through stories, songs, activities, and daily life, taught children how to be good human beings and good relatives.

The old ones who were good hunters, for example, would share that knowledge with those children who showed such attributes. Similarly, the old ones who were artists, historians, and healers would share their knowledge with the children who showed an interest and talent for those activities. The old ones were also the relatives who were the closest to the children, holding

⁴¹ Visit with Maria Campbell (19 November 2010) Saskatoon, Saskatchewan.

responsibility to watch over and guide them. Maria offered the following example of the old woman who taught the first hunting skills to the children:

There is a word in our language—*Notokwew Matchiwin*—Old Lady Hunting. The *nokom*/grandmother would take the small children out on the land and teach them to hunt small game on their very first hunt. My *nokom* did it with my brothers and I—we'd all get ready, making our small snares and packing our small hunting bags—*muskimutsa*—with a knife, matches, a tin cup and some salt and a piece of bannock. Then she would take us out and she would show us the kind of terrain rabbit inhabited, pointed out their trails and showed us the proper protocols before showing us how to set our snare—all the time by telling small stories, giving information.⁴²

Maria stressed that her *nokom*'s stories taught her and her siblings about the proper protocols of respecting our animal relatives:

After our snares were set, we walked to another area, took out our tin cups and banged them together making as much noise as possible and scaring the rabbits so that they would run into the snares. Then she showed us how to kill them as quickly and painlessly as possible so that they wouldn't suffer. All the time, through little stories, teaching us about our responsibility and obligation to the relatives who gave their life for our nourishment. She taught us to skin them and cook them, and as we sat out in the bush eating the rabbit we had cooked over the small fire, she told us stories.⁴³

Maria connected the stories of hunting to the responsibilities towards our relatives—both in death and in life—through the laws of *wahkotowin*:

Later, as we got older, our fathers and uncles taught us, and in particular my brothers, how to hunt bigger game—but it was our *nokom*, who was also the community midwife and the woman who took care of the sick, and prepared relatives for burial, who taught us about taking life. Through her teaching and stories, we learned respect for the food we ate and the relatives who gave their life to us.⁴⁴

⁴² Visit with Maria Campbell (18 December 2011) Saskatoon, Saskatchewan.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Old ones were also one of the more important relatives within a family and community, for without them there was no past. The bundle of the old ones (*kaytayak*) carried many ceremonies and responsibilities:

Old ones carried stories, family and tribal histories, land histories, songs, ceremonies, and the list goes on. Each one of them excelled or specialized in something, like my *nokom*, a midwife, and my old uncle Patrick, a famous hunter.⁴⁵

The *katayak* bundle shows us the central knowledge held by the old ones. Even the word *kaytayak*, as Maria pointed out, is full of knowledge if one looks at its roots and meanings. All people in the community came to them to gain experience and knowledge, including the chief, the healers, and the hunters. Our people still do that today.

Iskwewak and Napewak

The third circle surrounding the old ones is the women's circle—*iskwew*—who are the protectors and nurturers. It was their responsibility to take care of the humans who were viewed as the future (children) and the past (old ones). If anything were to happen that could be construed as a threat, it was the women's responsibility to ensure the safety and health of the family and community.⁴⁶ The word *iskwewak* also contains a bundle of responsibilities,⁴⁷ obligations, and protocols, as well as ceremonies, songs, stories, dances—all the things they needed to continue to be strong women, mothers, nurturers, and protectors.

⁴⁵ *Ibid.*

⁴⁶ Visit with Maria Campbell (4 January 2011) Saskatoon, Saskatchewan.

⁴⁷ See especially Kim Anderson, *Life Stages and Native Women: Memory, Teachings, and Story Medicine* (Winnipeg: University of Manitoba Press, 2011) (this comprehensive book provides a substantial and thorough examination of the roles and responsibilities of Cree and Anishnaabe women).

Surrounding all the family members is the outermost circle represented by the men—*napewak*. They stand in the outer circle as the protectors and providers whose responsibility it is to keep the family, community, and nation safe.⁴⁸ *Napewak* also held within their bundle their own sacred ceremonies, stories, songs, and activities to keep them strong and help guide them in their work as protectors and providers.⁴⁹

Four Directions/Doorways

The *wahkotowin* circle, as Maria explained, also encompasses the four doorways or directions, and similar to the above circles, each doorway and direction carries a bundle. These four doorways and four directions also represent the four hills, the four races of people, and the four seasons, among a number of other representations, each one with a bundle containing stories, songs, ceremonies, teachings, laws, taboos, responsibilities, and obligations.⁵⁰

Male/Female

Maria shared a useful tool to illustrate the male and female balance within the circle: “Now draw a horizontal line across the image of the four concentric circles. We are shown that grandmother owned half of the circle, and that grandfather owned the other, showing us that there is always balance in all things in life, masculine and feminine, night and day, sun and

⁴⁸ Visits with Maria Campbell (2010–2012) Saskatoon, Saskatchewan.

⁴⁹ Many more teachings and bundles are associated with the men and their unique responsibilities and obligations to the community. As I am a woman, I have not received those teachings. A male teacher or old one would share teachings about men’s responsibilities and bundles with male students.

⁵⁰ Visits with Maria Campbell (2010–2012) Saskatoon, Saskatchewan.

moon, etcetera.”⁵¹ *Kotohwinow*, our father, is the sky world, and his helpers are the sun, the air, and the thunders, to name a few.⁵² *Ki'kahwinow* is our mother, whose helpers are the earth, moon, water, and other relations.⁵³ Each one of the concepts carries a bundle of teachings, helping us with stories, songs, ceremonies, and protocols that connect us with a better understanding of our *wahkotowin*, our creation.

Stories, Seasons, and *Wahkotowin*

Sacred stories were most often shared throughout the fall and winter months. Maria remembers that sacred stories began to be told in the autumn after the first snowfall, would continue into the spring, and would stop when the frogs started singing.⁵⁴ These stories, called *ahtyokaywina*, are told mostly through the character of *wesakachak*,⁵⁵ our first teacher. Known as our older, or eldest, brother, he is also a healer and trickster. He is an embodiment of all that is life—humour, gentleness, kindness, love, profanity, trickery, cruelty—and through him, and the stories that were shared about his experiences, we learned about creation, the taboos, and the laws of our world, including rules, responsibilities, obligations, and protocols.

Maria remembered that in the spring, after the frogs started to sing, her sisters and brothers would be sent outdoors to listen to their relatives. Her *nokom* would say, “They have traveled to faraway lands and have come home, others have been sleeping all winter and have had wonderful dreams and visions and they want to share these with us. Listen.” And they would

⁵¹ Visit with Maria Campbell (18 December 2011) Saskatoon, Saskatchewan.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ There are certain Cree protocols that dictate that this character is called “our elder brother” during the spring and summer months, and can be called by his name only during the winter months.

all listen. She clearly remembered not only listening as a child, but also learning how to listen to the sound of each animal. Each bird, each frog, helped the children to better know their animal relations, teaching the young people skills about the creatures and non-human relatives who shared their land. The importance of listening to the animal relatives is directly connected to continued survival:

Maybe that sounds romantic and noble, but it was really just common sense. If you are living on the land and you are completely dependent on it, then you must know everything possible about it. You must recognize the different voices and languages of those relatives, their ways and habitats, or you would die. You had to know if that was a teal calling, or a canvas back [duck], or a mudhen; you had to know about bear, etcetera. Today, kids might recognize a duck call, but not likely the name of the duck, or all ducks by their calls.⁵⁶

Learning to listen is related to the seasons, and the sacred stories are connected with each season or cycle. Each cycle, season, and creature had its own histories, stories, ceremonies, rituals, songs, taboos, and laws. One always learned these stories at a particular place, as stories not only have seasons, but have places, and those stories were only told at those places. For everything, there is a reason, a purpose, and a teaching. It is up to us, as the younger generation, to learn about these laws from our old ones through the songs, stories, ceremonies, and protocols in order to best honour and take care of all our relatives. Each person will choose to learn a new skill or, in the modern world, change a part of their life at a certain time and within a certain season, helping us remember that life changes cannot be forced, and can only occur when a person feels ready and open for a certain teaching.

⁵⁶ Visit with Maria Campbell (29 November 2010) Saskatoon, Saskatchewan.

Self, Family, Community, Nation

The four concentric circles also represent the self, family, community, and nation. Each circle is interrelated, so that when we, as individuals, choose to heal, our family, communities, and nation also get stronger. All four circles are intricately related in such a way that when, for example, a positive or negative event affects a nation, all the inner circles will be touched in some way.

It is important to remember that although each Indigenous nation has similarities, each separate First Nation, located within distinct territories and using different languages, are completely unique:

Each nation had their unique forms of governance, based on their cultural values and traditions. Indigenous ways of governing using Indigenous laws and values were alive and well before any visitors came to this place. They continue to be in place today. Broadly speaking, many Indigenous nations follow similar protocols in terms of governing with respect, and following ways of consensus. Each person within the circle, including the children, was respected and could share their own point of view on an issue. We must be ever cognizant however that each nation based on the lands, values, and traditions, is completely unique and conduct business according to their own traditions, from Cree or *Nehiyow* ways, to Inuit ways, to Mohawk ways, to Squamish ways, to Mik'maq, or Métis ways.⁵⁷

Through the honouring of each nation, and each distinct territory, it is important to also acknowledge that much of our knowledge of kinship relationships comes through traditions on the land such as hunting, fishing, and berry picking. At one time, Indigenous nations were fully aware of exactly where on the land each family group or clan belonged, how each person fit into that family group, and how that belonging dictated roles, responsibilities, and obligations. The

⁵⁷ Visit with Maria Campbell (11 January 2011) Saskatoon, Saskatchewan.

land-family connection was remembered in many ways: through the telling of family and tribal histories; of experiences that happened on the land; of experiences with particular animals; of stories of sacred places where ceremonies were held; or of people coming together for a particular event.

These land-family stories have been documented by a number of scholars and historians, notably Lawrence Barkwell.⁵⁸ Barkwell has written about veterans and families in the Northwest in 1885 and documents extensive kinship ties. His accounts provide insight into Métis and First Nation family life and the reasons that families came together on the land at particular times. Barkwell's research also helps us to see the divisions beginning to occur between Métis, Halfbreed, and First Nations kinship relationships, and the breakdown of *wahkotowin* as family members and relatives were forced to choose opposing sides in the years leading up to the 1885 resistance.⁵⁹ Barkwell noted,⁶⁰ for example, that much of Métis society was egalitarian, and that the roles of men and women were equally important to society. Reaffirming the integral role of women in the healing and protecting of our families may be viewed as a key impetus in the healing of violence occurring upon, and within, our nations.

Métis historian Brenda Macdougall,⁶¹ spoke specifically about the laws of *wahkotowin* in her book *One of the Family: Métis Culture in Nineteenth-Century Northwestern Saskatchewan*.⁶²

⁵⁸ Lawrence J. Barkwell, *Veterans and Families of the 1885 Northwest Resistance* (Saskatoon, SK: Gabriel Dumont Institute, 2011).

⁵⁹ *Ibid* at 6 (the author managed to obtain enough biological and genealogical information to ascertain that "First Nations participants had Métis grandmothers, mothers, or wives, and many of the Métis participants had Lakota, Dakota or Cree grandmothers, mothers or wives" at 6).

⁶⁰ *Ibid* at 9.

⁶¹ Macdougall's research and writing about *wahkotowin* fits best with the essence of this thesis' methodology, as her commitment to and inclusion of the family and community kinship teachings of *wahkotowin* into her own extensive

She writes about the social and familial relationships that are directly connected with the responsibilities and obligations to the land:

The Métis family structure that emerged in the northwest and at Sakitawak was rooted in the history and culture of Cree and Dene progenitors, and therefore in a worldview that privileged relatedness to land, people (living, ancestral, and those to come), the spirit world, and creatures inhabiting the space.⁶³

Macdougall opened her book with a quote from Lawrence Ahenakew, a Métis elder from Ile-la-Crosse, Saskatchewan:

I'm one of the family, the family of those who grew up in Sandy Point. When I walked up today after coming from across the lake, I saw many people that I hadn't seen for years. I started shaking hands and the smiles were there. They acknowledged me [as] a part of this family. As I look across the bay...I see the house that I grew up in. It's not there any more, but I see the house I grew up in. I see my grandmother washing clothes. I see my grandfather building a boat. I see all that, because the work ethic was there. The need to survive, the connection with the land. That continued need with us, with our children, with our grandchildren, to show them the importance of what [was] here. If we don't do it, nobody else will. You have to have that connection to this particular place, in order to be able to do that.⁶⁴

Ahenakew understands himself through this sense of place. Macdougall carefully summarizes the land, kinship, and identity relationship. She wrote, "Identity, in this conceptualization, is inseparable from land, home, community or family. They are all one and the same."⁶⁵ The old ones often say, "*Pay o qun*," which means "They are the same" when they refer to our reciprocal relationships with family, land, and community. These teachings were about the healthy family, community, and nation of long ago—healthy *wahkotowin*. This healthy way was our reality

historical scholarly research encourages other Métis scholars from this territory, such as myself, to apply *wahkotowin* teachings, and ways of thinking, knowing, and living, and being to other academic disciplines.

⁶² Brenda Macdougall, *One of the Family: Métis Culture in Nineteenth-Century Northwestern Saskatchewan*, (Vancouver, BC: UBC Press, 2010) at 1 [Macdougall].

⁶³ *Ibid* at 3.

⁶⁴ *Ibid* at 1.

⁶⁵ *Ibid* at 3.

before our traditional laws, worldviews, and ways of life were nearly destroyed by the imposition of colonial and present-day laws, policies, legislations, and programs.

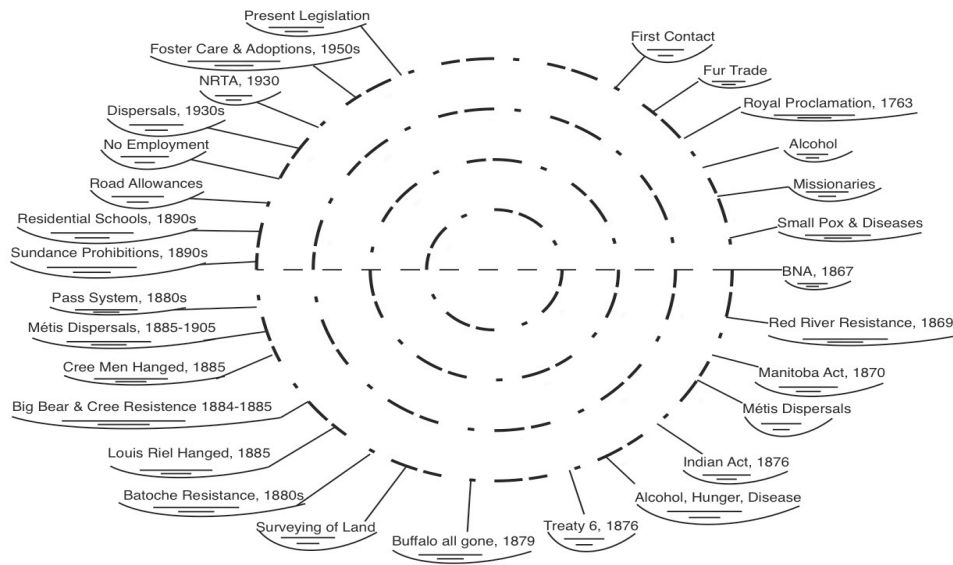
Shattering of *Wahkotowin*

Programs, policies, projects, laws, and legislation continue to be unilaterally imposed on Indigenous nations living within the boundaries of Canada, without our free, prior, and informed consent.⁶⁶ Image 2, created by Maria Campbell, depicts the “Broken Circles,” and illustrates how our circles were shattered, and our relationships with family, community, nation, and territory were fractured beyond recognition. As families were forced apart, the unique roles of men and women were attacked and broke apart. Our men, who stand at the outside of the *wahkotowin* circles, were on the front lines, so to speak, of the colonial incursion, and were the first to experience their traditional responsibilities and obligations break apart. Our women were then denigrated physically and sexually. Women’s leadership roles were dishonoured, and their Indigenous identity and connection to their territory were legislated away from themselves and their children.⁶⁷ When, finally, the connections between old ones and the children were dismantled, many of us were weakened and disheartened, without a history or a future, and left with long-term trauma and loneliness as our relationships were, and still are, pulled away from us. The “Broken Circles” image is laid out below, beginning from first contact:

⁶⁶ See especially, *Jobs and Growth Act* (Bill C-45) Royal Assent, December 14, 2012: SC 2012, c 31.

⁶⁷ *Indian Act*, RSC 1927, c 98, s 40 and 41.

Broken Circles



This image is an example of how these circles were disrupted or broken by events, policies and legislation

Image 02

© M Campbell 1986

As the “Broken Circles” image depicts, the onslaught against our nations, communities, and families occurred at a fast and furious rate, as our kinship ties, along with the very lives of our relatives, were almost completely decimated through the introduction of disease and alcohol, and through missionary indoctrination. As we go around the circle, throughout history the imposition of programs and legislation nearly wiped out our men’s circle, eventually leaving vulnerable the women, old ones, and children. As Maria explained, approximately every fifty years, another

part of the kinship circle was shattered. After the breaking of the men's circle, the women's circle was shattered, then the old ones', and finally the children's circle broke apart as they were forcibly removed into residential institutions and non-Indigenous home placements.

My teacher relayed to me the history connected with the "Broken Circles" image. She outlined the colonial and more recent historical events that occurred on the prairies, and how each occurrence brutally shook up and almost completely broke apart our nations, communities, and families. As we move around the circle, following the history of events, we can understand how colonial and more recent history negatively transformed the strength of our kinship relationships.⁶⁸ As Maria recounted, the *wahkotowin* kinship circles shattered, and are still shattering, as formal and informal policies and practices continue to affect the strength of our kinship relationships, responsibilities, and obligations.

The pass system, for example, was not an official *Indian Act* policy, but rather was developed through informal discussions in the late nineteenth century as a response to concerns of First Nations and Métis resistance. The pass system was an "expedient policy" that was originally initiated on a suggestion of the deputy superintendent general of Indian Affairs to Prime Minister Macdonald in 1885.⁶⁹ After 1885, Indian bands who participated in the Northwest Resistance were viewed as insubordinate, with eight Indians hanged in Battleford in front of Indian witnesses.⁷⁰ Sarah Carter acknowledged that Hayter Reed, an official who rose through the ranks of Indian Affairs, was one of the main architects and strongest advocates of

⁶⁸ The image is meant to be a non-exhaustive list of the colonial and present-day events that have negatively affected our kinship relationships on the prairies, especially within Treaty 6 territory, in present-day Saskatchewan.

⁶⁹ Barron, *supra* note 10 at 27–28.

⁷⁰ Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen's University Press, 1993) at 145 [Carter].

severe Indian repression in the Northwest,⁷¹ creating measures to punish and coerce Indians, such as the refusal to supply them with basic food rations.⁷² She stated that Reed divided bands into loyal and disloyal, and those who did not fight received benefits, such as animals and machinery for farming, while other bands would be controlled when traveling away from their reserves and required to produce a pass that declared their business when off the reserve.⁷³

Native Studies scholar F. Laurie Barron researched the pass system and established that the origins behind the pass system were multi-layered.⁷⁴ The pass system was originally envisioned as a way to limit Indigenous nations crossing back and forth into the United States, and to dispel irrational fears associated with Indians allegedly camping too close to white settlements.⁷⁵ The pass system was also employed as a measure to dissuade parents from visiting their children at residential schools.⁷⁶ Finally, the pass system gave Indian agents more power to prevent Indians from participating in banned ceremonies and dances at other reserves.⁷⁷ Although the pass system may have been designed to confine Indian peoples to their reserves and to severely limit their mobility, the larger goal was to prevent the perceived threat of First Nations and Métis leaders politically uniting against the development and settlement of the Northwest.

⁷¹ Carter, *supra* note 70 at 141–145.

⁷² *Ibid* at 144.

⁷³ *Ibid* at 145–146.

⁷⁴ See generally, Barron, *supra* note 10.

⁷⁵ Barron, *supra* note 10 at 28.

⁷⁶ RCAP Pass System, *supra* note 10 at 296.

⁷⁷ Barron, *supra* note 10 at 31.

The RCMP initially resisted implementing punishment against a person found roaming without a pass, as they knew that if challenged the pass system would be found illegal.⁷⁸ The pass system was generally ineffective in restricting movement, as it was at times ignored both by Indians and the Indian agents.⁷⁹ The goals to restrict movement of Indigenous peoples versus the colonial goals of assimilation with white society were blatantly contradictory. If an Indigenous person returned to the reserve later than the permit allowed, they could also be charged with vagrancy, beginning a cycle of criminalizing Indigenous peoples and, arguably, hampering chances of economic success at that time.

The pass system was also said to have stemmed from non-Indigenous settlers complaining that Indian farmers were too successful in agricultural ventures.⁸⁰ By the mid-1880s, crops grown by Indian nations were sizeable and the restraints of the permit system severely limited the farming success of Indigenous nations on the prairies.⁸¹ The Department of Indian Affairs began forbidding Indians from selling or trading their goods, effectively controlling all of their financial transactions.⁸² Plains history reports that Indian farmers were so successful at farming that the non-Indian farming community began to complain about “unfair competition,” leading Indian Affairs to initiate roadblocks to prevent Indian farmers from receiving good machinery and good advice, and to illegally implement the pass and permit system.⁸³ The permit was supposedly introduced as a measure to protect Indians from

⁷⁸ Barron, *supra* note 10 at 36

⁷⁹ RCAP Pass System, *supra* note 10 at 297.

⁸⁰ Jack Funk & Gordon Lobe, eds, *And They Told Us Their Stories: A Book of Indian Stories* (Saskatoon, SK: The Office of the Treaty Commissioner, 2008) at 24 [Funk & Lobe].

⁸¹ Carter, *supra* note 70 at 157.

⁸² *Ibid* at 156.

⁸³ Funk & Lobe, *supra* note 80 at 23.

unscrupulous settlers.⁸⁴ The permit system strictly regulated the sale of any grains, roots, or produce, while also implementing penalties to those who bought any of these products from Indians.⁸⁵ Indians were required to obtain a permit to sell a cow, load of hay, firewood, lime, and charcoal, and required a pass if they needed to visit a friend or go to town.⁸⁶

As mentioned previously, the pass system was also connected with limiting participation in spiritual and religious ceremonies. On the prairies, however, the sundance was viewed as a detrimental practice that pulled Indian people away from their new on-reserve farming endeavours, an affront to the bigger goal of promoting development, settlement, and engineering individualized and civilized Indian farmers. Section 114 of the *Indian Act* was designed to further suppress Indian movement and impose an assimilationist worldview. Through the assistance of Indian agents, farm instructors, and police, officials were advised to “proceed gradually, allowing time for the passing away of the older generation and for the assimilation programs to take effect.”⁸⁷ Despite this directive, elders and knowledge holders were frequently arrested and jailed for holding sacred sundance ceremonies.⁸⁸

The sundance was a sacred ceremony on the plains meant for spiritual renewal. It was also a time of sacrifice, when dancers would fast, dance, and pray for special requests for their families and communities. In 1884, an amendment to the *Indian Act* was passed that criminalized certain religious ceremonies and legislated direct state interference.⁸⁹ At this time, the legislation

⁸⁴ *Ibid* at 24.

⁸⁵ Carter, *supra* note 70 at 157.

⁸⁶ *Ibid* at 25.

⁸⁷ Katherine Pettipas, *Severing the Ties that Bind: Government Repression of Indigenous Religious Ceremonies on the Prairies* (Winnipeg: University of Manitoba Press, 1994) at 108 [Pettipas].

⁸⁸ *Ibid* at 118–120.

⁸⁹ *Ibid* at 88.

focused specifically on outlawing the potlatch ceremonial system, practiced primarily by Northwest Coast First Nations.⁹⁰ Section 114 of the *Indian Act* was amended in 1895. It did not prohibit the actual sundance ceremony, but rather focused on outlawing redistribution practices, such as giveaways, and the sacrificial piercing practices within the ceremony. The intent of the policy had already begun in 1893, when, for example, sundance participants in Battle River were arrested and the sacred sundance ceremonial lodge was torn down.⁹¹ The sundance prohibitions were a direct affront on *wahkotowin*, limiting the time that families and communities could come together to visit and reaffirm political and kinship alliances, severely hampering the transmission of cultural knowledge from elders to adults and children.⁹²

Euro-Canadian colonists, however, viewed the sundance with great suspicion and contempt, regarding the ceremony as a recreational pursuit or pagan superstition, or, worse, a type of devil worship.⁹³ The sundance ceremony was also feared to diminish the civilizing strategy directed at children in residential industrial schools on the prairies, with reports that children regressed to their old beliefs after attending a sundance.⁹⁴ Elders and ceremonial leaders had a responsibility to teach the children, and were held responsible for undoing the hard work of assimilating children into a new culture, language, and society. Thus, officials actively went to great lengths to curtail and punish the ceremonial life and *wahkotowin* responsibilities and obligations of Indigenous families and communities.

⁹⁰ *Ibid.*

⁹¹ *Ibid* at 107.

⁹² *Ibid* at 58–60; Barron, *supra* note 10 at 31.

⁹³ Pettipas, *supra* note 87 at 96.

⁹⁴ *Ibid* at 102.

On the prairies, a state of fear intensified in settler communities, especially after the Métis and Cree resistance in 1885. After the Battle of Batoche, settlers reportedly did not feel safe, and the sundance was inaccurately perceived as a dangerous opportunity for large groups of Indigenous peoples to come together, believing in the proposition of mass Indian civil disorder plans.⁹⁵ The goal was to limit any gatherings and visiting between Indigenous nations. The policy restriction deeply affected integral connections between relatives and kinship groups,⁹⁶ and weakened the *wahkotowin* reciprocal responsibilities to come together, share with, and help one's relatives.

The sundance policy was also challenged on the grounds that the prohibition was a treaty violation, with Indigenous nations arguing that religious expression was never discussed or contemplated within treaty negotiations,⁹⁷ and that freedom of movement to hunt and gather was a protected treaty right. One chief stated that Section 114 was a direct contravention of their own nation's customary laws given to them by the Creator. How could state-imposed laws contravene the original Creator's laws that outline one's responsibilities to practice certain beliefs and spiritual obligations?⁹⁸ And how could the state law go against treaty obligations to honour each other as relatives and to honour our connections and obligations to all of our relations within creation?

Neal McLeod, a Cree scholar and historian, wrote about the exile of Indigenous peoples from their original territory and the subsequent effects on the people:

⁹⁵ *Ibid* at 102.

⁹⁶ *Ibid* at 113.

⁹⁷ *Ibid* at 128.

⁹⁸ *Ibid* at 128.

Exile involves the removal of people from their land. Politically, ideologically and economically, Indigenous groups have been overwhelmed by larger groups, usually nation states. One could call this the colonization of Indigenous Being (of Indigenous worldview and of life-world). It is the imposition on an ancient people of a new colonial order and a new way of making sense of the world. The effect of this spatial and spiritual exile is devastating, as the alienation exists both in our hearts (spiritual exile) and in our physical alienation from the land (spatial exile).⁹⁹

Ways of being, worldviews, and a complete way of life were nearly destroyed as a result of forced exile. To be disconnected from land and from our kinship responsibilities and obligations represents the essence of the shattering of *wahkotowin*. Further research needs to be considered and questions asked about what happens when a nation is disconnected from traditional territories. Unlike immigrant families who move to a new country, Indigenous peoples remain within their territory, but have been forcibly disconnected from their original homelands. More broadly, Indigenous peoples have experienced a break in relationships with one another and with a diverse ecosystem. Reflection needs to be given to the multitude of losses: loss of connection with water, the fish, and the wild game eaten by ancestors for centuries; loss of kinship ties with earth, animal, water, and plant relatives; and loss of ancestral stewardship responsibilities and obligations connected with place.

The legislated destruction of *wahkotowin*, including the forced transfer of our children to another group, arguably meets the definition of genocide.¹⁰⁰ As defined in international law, genocide includes acts against national, ethnic, racial, or religious groups, including:

- 1) Killing members of the group;
- 2) Causing serious bodily or mental harm to members of the group;

⁹⁹ McLeod, *supra* note 13 at 56.

¹⁰⁰ See generally, Patricia Monture-Angus, *Thunder in my Soul: A Mohawk Woman Speaks* (Halifax: Fernwood, 1995). The late Indigenous scholar, lawyer, and professor viewed the forced removal and transfer of Indigenous children as an act of genocide.

- 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- 4) Imposing measures intended to prevent births within the group;
- 5) Forcibly transferring children of the group to another group.¹⁰¹

Legal scholar Tracey Lindberg stated that the cumulative effect of the imposition of laws based on a foreign worldview and way of governance is likened to a bomb that has exploded¹⁰²—a bomb programmed by previous and existing institutions, governments, and laws. As Lindberg described, Indigenous peoples are living now in what may be described as a “post-bomb life” filled with “land mines” and the “fallout”¹⁰³ from the imposition of colonial and Canadian laws. The long-reaching effects of this bomb ensure that no Indigenous person gets out unscathed, so to speak and, in the specific case of Indigenous children brutalized, sickened, and mysteriously perishing in the residential schools, some never make it out alive.¹⁰⁴

Colonial Historic Trauma

Kirmayer, Simpson, and Cargo linked oppressive colonial history and the present health of Aboriginal peoples, and recognized that this colonial history has had a profound transgenerational effect on the structure of families, communities, and nations.¹⁰⁵ Lavallee and Poole¹⁰⁶ confirmed this causal link between colonial history and Aboriginal health, citing the

¹⁰¹ *Convention on the Prevention and Punishment of Genocide*, Dec 9 1948, S. Exec Doc O, 81-1, Article II (a) - (e) [*Genocide Convention*].

¹⁰² Tracey Lindberg, “Gladue and Aboriginal Women in Prisons” (Talk delivered at The 3rd National Conference on Aboriginal Criminal Justice Post-Gladue, Toronto, Ontario 30 April 2011) [Lindberg Talk].

¹⁰³ *Ibid* (terms of analogy used by Dr. Lindberg during her conference speech).

¹⁰⁴ See generally, Truth and Reconciliation Commission, *Missing Children and Unmarked Burials*, online: Working Group on Missing Children <trc.ca/websites/.../File/.../Working_group_on_Mis_7456E0.pdf>.

¹⁰⁵ Laurence Kirmayer, Cori Simpson & Margaret Cargo, “Healing traditions: culture, community and mental health promotion with Canadian Aboriginal peoples” (2003) 11 *Australian Psychiatry*, S15 at S18.

¹⁰⁶ Lavallee, *supra* note 39 at 273–274.

detrimental impact of colonization on the physical, mental, emotional, and spiritual health of Indigenous peoples living in Canada. They pointed out that Western institutions incorrectly choose to treat only the symptoms of ill health, such as addictions, instead of understanding and taking time to heal the root causes through the rebuilding of the individual, family, community, and the nation identity of Indigenous peoples.¹⁰⁷ Indigenous scholar Poka Laenui framed Indigenous healing as a process of decolonization, honouring our active reclamation and re-learning of our histories, cultures, identities, and supporting the remembering and rebuilding of our kinship relationships and obligations to all of creation.¹⁰⁸

Summary

Chapter 1 outlines the core of this thesis: an understanding of *wahkotowin* and the ways in which our *wahkotowin* was intact prior to contact. With the help of my teacher Maria Campbell, I outline the importance of each *wahkotowin* circle: *awasisak*, *kaytayak*, *iskwewak*, and *napewak*. The four doorways, the balance between the grandfather and the grandmother spirits, and the seasons and stories are set out. Maria reminds us of our connection to the land and of our reciprocal obligations to the animals. The *wahkotowin* circle also includes our reciprocal relationships with, and obligations to, our nation, our community, family, and ourselves. In the second part of Chapter 1, I outline how our *wahkotowin* kinship circles have been shattered since contact. I discussed the imposition of the pass system and the prohibition of our spiritual ceremonies as two examples of the breaking of our kinship relationships and

¹⁰⁷ *Ibid* at 275.

¹⁰⁸ Poka Laenui, "Process of Decolonization" in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision* (Vancouver: University of British Columbia Press, 2000) at 150 [Laenui].

obligations. I briefly outline the definitions of genocide and its relation to the forced transfer of Indigenous children into the custody of residential schools, arguably the most brutal feature of prairie history as children were removed from their family, sexually violated, physically and mentally brutalized, not permitted to see their family, and punished for speaking their languages and practicing their cultures. I explain the concept of historic trauma in order to contextualize the historic pain and generational life experience of Indigenous nations, communities, and families throughout history on the prairies. By properly framing the problem, we can better understand how we can decolonize ourselves, while also working on the continued health and healing of our family, community, and nation.

CHAPTER 2

MY CIRCLE: NATION, COMMUNITY, FAMILY, SELF

The first step in honouring Indigenous protocols—especially when applying an overarching methodology and worldview such as *wahkotowin*—is to locate oneself¹⁰⁹ within and in relation to family, place, and land location(s).¹¹⁰ This is the heart of *wahkotowin*, telling the stories of our relatives, remembering the ceremonial ways, and re-establishing relationships. Indigenous researchers often choose to locate themselves within place, family, and community. The *Canadian Journal of Native Education* recently devoted a collection of articles to the theme of Indigenous research. Indigenous scholar Jean Paul Restoule stated in a journal editorial:

When we identify ourselves, we identify ourselves in relation to a lineage, a people and a place, signifying that the past is alive and activated in the present. Almost all authors in this issue provide a location for themselves, helping us understand how they are situated, the forces that shape their experiences and knowledge, and the struggles that they have encountered on their research journeys.¹¹¹

The purpose of this chapter is to follow the *wahkotowin* way of being and to honour the concentric *wahkotowin* circles. I explore each of the four concentric circles: my nation stories, my community stories, my family stories, and my personal stories. Following the adage that you cannot move forward until you fully know who you are, where you come from, and to whom you belong, from a *wahkotowin* perspective I will apply those concepts to my own personal journey and contextualize my story within the stories of my kinship relations. Telling one's story can

¹⁰⁹ Absolom, *supra* note 24 at 97.

¹¹⁰ For more information on locating or “situating self” as an Indigenous person within Indigenous research and place, see Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (Toronto, ON: University of Toronto Press, 2010) at 110; Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999).

¹¹¹ Jean-Paul Restoule et al, “Editorial: Connecting to Spirit in Indigenous Research” (2010) 33: 1 *Canadian Journal of Native Education: Connecting to Spirit in Indigenous Research* at 3 [Restoule].

bring up painful emotions, but often can provide solace, allowing one to contemplate and contextualize, to reframe and release blame, and enable us to continue our healing process as we decolonize our mind, body, heart, and spirit.

The Supreme Court in *R. v. Gladue*¹¹² offered us a guide to help contextualize a person within history and place, and provided a framework to consider solutions for healing. The Supreme Court held that in order to properly consider the case of an Aboriginal person, their personal story must be contextualized through the use of a specified framework of analysis:

- 1) The unique systemic and background factors which may have played a part in bringing the particular aboriginal offender before the courts; and
- 2) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.¹¹³

While I will outline the *Gladue* decision in extensive detail in Chapter 3, for the purposes of this chapter I will offer my personal story as a way to properly introduce and ground myself in place from an Indigenous perspective, and also as a way to demonstrate how a story can be viewed through a historical *wahkotowin* lens. This will entail highlighting specific historical events, programs, laws, policies, and legislation and the generational link of my personal life experience to the historical experiences of my family, community, and nation. In honouring the *Gladue* framework, the telling of my nation's and community's history, and how those especially destructive events affected my family and personal story, may be helpful in better understanding an offender's story through a contextual and historical analysis.

¹¹² *Gladue*, *supra* note 1.

¹¹³ *Ibid* at 66.

My intention within Chapter 2 is to use the circles and the teachings within them as a tool to help guide my story, and to demonstrate that while each *wahkotowin* area is its own entity, each circle also overlaps and flows into the other, reminding us of our relatedness to the whole of creation. The *wahkotowin* circles can be viewed as a mnemonic device, or visual guideline, that helps us envision our kinship relations and our history. I will attempt to tell my story through the use of the *wahkotowin* circle teachings in order to demonstrate the meaning of each *wahkotowin* circle. I will also apply the circle teachings as I speak of my own kinship relationships within my family circle—children, old ones, women, and men.

In this chapter, I will outline the ways in which First Nations and Métis peoples' *wahkotowin* circles broke down,¹¹⁴ as missionaries, alcohol, pass systems, and legislative programs such as residential, industrial, and mission schools were imposed upon Indigenous peoples living on the prairies. As grandchildren and great-grandchildren, we have inherited the often disastrous and destructive effects of these policies and missions, including the inheritance of alcohol and sexual abuse, internalized colonization, racial violence, and the continued loss of Indigenous languages, lands, cultural teachings. How were my *wahkotowin* relationships and obligations affected by the breaking of my *wahkotowin* kinship circles? I will begin by telling the history and stories of my nation, continuing with the history of my community, followed by the stories of my family, and, finally, completing the circle, sharing stories of self, and how I was helped—and helped myself—back to health.

As a result of colonial policies and the repression of Indigenous histories, a number of our relatives were not able to learn from their elders about their nation's history, including both

¹¹⁴ See Image 2, Broken Circles.

the proud and tragic stories associated with each person's ancestral history. For many of us, our kinship relationships with our nations, communities, and families, and to the lands, waters, and animals, began to disintegrate with each subsequent colonial incursion. Our relationship with the land was severed, and when they began to take our children away—our future and the inheritors of all cultural and spiritual knowledge—we began to break down completely. Old ones were left alone, robbed of their special relationship to teach the children. Without the old ones, the children were effectively left without a history—lost, lonely, and without an identity or an inheritance.

Nation

What exactly constitutes an Indigenous person's "nation"? Should one consider the history of the Canadian nation, or the history of Cree nations or Métis nations?¹¹⁵ I am connected to an ancestry, a nation, and specific land places on the prairies. As I consider the *Gladue* decision through the lens of *wahkotowin*, I must contemplate both my Cree and Métis ancestors, and elaborate on who they are, where they are from, and the life events they have experienced leading to my generational inheritance.

¹¹⁵ The division of my story into four categories is intended to provide an example of a workable template or organizational map that honours the *Gladue* duty to consider the social history of each Indigenous person. It is also an attempt to organize the historical and contextual information into *wahkotowin* relational sections, telling the history of my nation, community, family, and self. At times, each of these sections will overlap where certain legislation affected both a nation and the community, or in the case where both the community and the kinship relationships within the family inherited certain trauma or inherited certain experiences of joy and pride. I am also cognizant that I cannot begin to tell the entire history of Cree and/or Métis peoples on the prairies within the confines of this thesis, but can merely provide an example of certain historical events that pertain to my specific life story.

As First Nations and Métis peoples, our *wahkotowin* was strong prior to colonial legislative impositions. My Métis nation was, and still is, a proud group of people. In my case, many of my English Métis ancestors worked for the Hudson Bay Company posts, and later many settled in the Red River community of St. Andrew's, north of present-day Winnipeg. At Red River, prior to the political pressures to migrate to the Saskatchewan Valley, many of my Métis ancestors farmed on river lots and practiced their Anglican faith while also honouring their Cree and Saulteaux values. Although there was at times tension, we lived and worked side by side with our French Catholic Métis relations.

The Métis protested the takeover of their homelands in a confrontation known as the Red River Resistance in 1869.¹¹⁶ They objected to the unilateral transfer of their land, as the Hudson Bay Company sold the territory of Rupertsland to the Dominion government in 1869.¹¹⁷ All of these land transfers occurred without any consultation or consent of Indigenous nations within the area, including the Cree, Saulteaux, or Métis nations. By the late 1800s, kinship relationships and reciprocal obligations were beginning to weaken from the influence of missionaries, alcohol, epidemics, and the disempowering residue of the *Manitoba Act*¹¹⁸ and the *Indian Act*.¹¹⁹ The *Manitoba Act* did not differentiate between the French and English Métis, recognizing us simply as “half-breed residents” who had Indian title to the lands, and that our Indian title was to be legally extinguished by the *Manitoba Act*.

¹¹⁶ Métis peoples protested the surveyors that were staking out the land to prepare for more incoming settlers. Under the leadership of Louis Riel, Métis peoples took a stand over their land and language rights, and opposed the upcoming transfer of the lands from the Hudson's Bay Company to the Dominion of Canada.

¹¹⁷ See Kent McNeil, “Sovereignty and the Aboriginal Nations of Rupert's Land” *Manitoba History*, 37, Spring/Summer 1999 [McNeil]. McNeil was critical of the Crown's claim, and thus the Hudson Bay Company's claim, to sovereignty in the territory historically occupied and used by Aboriginal nations.

¹¹⁸ *Manitoba Act*, 1870, (UK), 32 & 33 Vict, c 3, reprinted in RSC 1985, App II, No 8 [*Manitoba Act*].

¹¹⁹ *Indian Act*, SC, 1876, c 18 [*Indian Act*].

Despite legislated land allotment commitments within the *Manitoba Act* of 1870 and the *Dominion Lands Act*¹²⁰ of 1879, Métis and Halfbreed families and their children were left landless. The majority of the families did not actually acquire the 1.4 million acres granted¹²¹ through the *Manitoba Act* to the children of Halfbreed heads of families. The *Manitoba Act* included a land grant and scrip¹²² process, with sections 31 and 32 of the *Act* intended to extinguish any Indian land title rights of Métis peoples.¹²³ Section 125 of the *Dominion Lands Act* also provided for a land or money scrip system, but via fraudulent procedures and speculator actions many Métis families did not receive the lands promised.¹²⁴ The forced removal and exile from the lands was evidenced by a number of Métis peoples forcibly, and sometimes violently, removed from their homelands.¹²⁵ With this loss, Métis and Halfbreed peoples lost their legal ties to the land, while their spiritual relationship and obligation to the land, as well as their collective political stance as a cohesive group of people, was severely compromised.¹²⁶

As the buffalo were nearly exterminated by the late 1870s, a desperate climate of starvation resulted for the Cree, Saulteaux, Métis, and Halfbreed nations within the territory. Negotiated in 1876, Treaty 6 covered a huge territory from east to west, from present-day Prince Albert, Saskatchewan to the territory near Edmonton, Alberta, and south to near the Qu'Appelle

¹²⁰ *Dominion Lands Act*, 1879, S.C. 1879, c 31 [*Dominion Lands Act*].

¹²¹ *Royal Commission on Aboriginal Peoples*, Vol. 4, Perspectives and Realities, Chapter 5–Métis Perspectives at 313 [RCAP, Volume 4].

¹²² Scrip was a certificate for monies or lands to be received as recognition of Métis peoples' Indian title.

¹²³ Jean Teillet, *Métis Law in Canada*, 2011, online: Pape Salter Teillet Law <www.pstlaw.ca/resources/MLIC-2011.pdf> [*Métis Law*] at 9.

¹²⁴ Darren Prefontaine, *Métis History*, online: Encyclopedia of Saskatchewan <esask.uregina.ca/entry/metis_history/html>.

¹²⁵ For example, the community of Ste. Madeleine, near the Manitoba-Saskatchewan border, was exiled from their nation and territory, had their homes burned, and their dogs shot as the federal government implemented the *Prairie Farm Rehabilitation Act*.

¹²⁶ *Métis Law*, *supra* note 123 at 10.

Valley. From a First Nations perspective, sacred covenants were made at the time of treaty, promises that have not been upheld by the Crown. First Nations oral history maintains that the lands were only to be shared,¹²⁷ while the written version of Treaty 6, for example, contends that the lands were ceded and surrendered.

After specific amendments, the *Indian Act* criminalized giveaway ceremonies,¹²⁸ such as the potlatch and sundance, and prohibited groups of people from gathering and participating in these vital cultural and spiritual ceremonies. The *Indian Act* also prevented any Indian from voting until they were given the right in 1960.¹²⁹ The Department of Indian Affairs also chose to impose a non-legislated pass system regime in selected Prairie areas after the 1885 Resistance in Batoche, whereby Indians were prohibited from leaving the confines of their small reserve lands unless they obtained a pass signed by the Indian agent.¹³⁰ Indians in the Treaty 6 area, for example, needed to obtain a pass to go hunting off the reserve, which was in direct contravention to the treaty promise to hunt on their traditional territories.¹³¹ The pass system continued through the 1880s, but was generally not used by the mid-1890s. However, F. Laurie Barron stated that the pass system continued to be illegally applied in some Prairie areas until the 1930s.¹³² Some Indian agents would force Indians to abide by the system through the withholding of food rations. If Indian people did not comply and were found off the reserve without a pass, they

¹²⁷ Tamara Starblanket, "Treaties: Negotiations and Rights", *ka-ki-pe-isi-nakatamakawiyahk/ Our Legacy: Essays* (Saskatoon: SK, University of Saskatchewan, 2008) 77, online: Our Legacy <http://scaa.sk.ca/ourlegacy/exhibit_treaties#_edn24>.

¹²⁸ *An Act further to amend "The Indian Act, 1880."* SC 1884, c 27, s 3.

¹²⁹ *Canada Elections Act*, SC, 1960, c 39, s 14 (8-9 Eliz II).

¹³⁰ RCAP, Pass System, *supra* note 10 at 296.

¹³¹ Funk & Lobe, *supra* note 80 at 150.

¹³² Barron, *supra* note 10 at 38.

were often prosecuted either for trespass under the *Indian Act* or vagrancy under the Criminal Code.¹³³

Forced removal from territory is viewed as an exile¹³⁴ from lands, and a physical and spiritual disconnect from kinship ties to land, family, and community. The destruction wrought upon Cree and Métis nations on the Prairies and the ensuing breakdown of *wahkotowin* was driven by the forcible dispossession and dispersal of First Nations and Métis nations from their traditional territories onto either small enclosed reserves or to live a marginalized existence on road allowances or in towns and cities. My ancestral English Halfbreed nation moved from the Red River country to the South Saskatchewan River country, and settled in the community of Halcro, near St. Louis, Saskatchewan. My Métis grandfather eventually moved to the nearby city of Prince Albert, to live, work, and raise his family.

Community

Prince Albert, the city in which I grew up, is known as the “Gateway to the North” and is surrounded by poplar, birch, pine and spruce forest. The city sits on the banks of the North Saskatchewan River. Many Cree, Dene, and Métis families, along with a number of various families of European descent, live in the Prince Albert area. It is located in the traditional territory of the Plains Cree, Métis, and, more recently, Dakota. Many people in Prince Albert did not know, or still do not know, the accurate history of Indigenous peoples. Many community members lacked any insight into how colonial history, genocide, brutality, and racism were

¹³³ Carter, *supra* note 70 at 151-152.

¹³⁴ McLeod, *supra* note 13 at 56.

connected to present-day situations. I grew up in an atmosphere divided by class and race in a town economically dependent on both natural resources and the imprisonment of Indigenous peoples. I have many memories from the 1970s and 1980s of witnessing addictions and poverty as a normal reality within Prince Albert. Alcohol is a spirit, the elders tell me, that has taken hold of many Aboriginal and non-Aboriginal peoples in Prince Albert, including my family. Alcohol often played a part in the jailing and over-jailing of First Nations and Métis people housed in the provincial and federal correctional institutions in Prince Albert. It also punished my relatives for covering their generational pain with alcohol, and has severely affected loving and kind relations within our community.

My Métis family, along with other Métis and Halfbreed families, settled in the historic Métis communities in the Prince Albert area,¹³⁵ adjacent to the South and North Saskatchewan Rivers. As mentioned above, many Métis families, including my ancestral family, had traveled to the Saskatchewan River territories shortly after the 1870 *Manitoba Act*. The Scottish and English Halfbreeds moved to the nearby communities of Macdowell, Crutwell, Lily Plain, and Halcro, while many Métis families lived in the Duck Lake, St. Louis, Batoche, and Fish Creek areas; a number of these families intermarried and socialized with each other.

Many Halfbreed and Métis families were forced out of the Red River area, including my maternal great-great grandparents, Maria McKay and William Thomas Corrigan. They traveled together to live and work on the South Saskatchewan River area with other Halfbreed families in

¹³⁵ Paget Code, *Les Autres Métis: The English Métis of the Prince Albert Settlement, 1862–1886* (MA Thesis, University of Saskatchewan, 2008) [unpublished] [Paget] (the thesis provided an excellent resource concerning the English Métis living in the Prince Albert area, including the Métis history of that specific land area, notably evidence that an English Métis named James Isbister founded the Isbister's Settlement in present-day Prince Albert in 1862 at 5).

the Halcro district, near the town of St. Louis, Saskatchewan. My grandfather, Cecil Edward, was a good friend of Métis scholar Howard Adams, and as children we would hear stories about Howard and their school days and sports competitions in St. Louis. Howard often mentioned the oppressive conditions within his published writings,¹³⁶ referring to the process of colonization and the brutal oppression that Métis and Halfbreed families experienced in the community. Although some Halfbreed people were shocked with Howard's "ahead-of-his-time" descriptions of the plight of the Halfbreed peoples in St. Louis, using terms such as "colonization" and "internalized oppression," his written documentation of life in St. Louis often helped me to put my grandfather's life into a historical and colonial context. It allowed me to understand how my grandfather must have felt growing up with palpable racism, oppression, religious bias, and hatred against Halfbreed peoples.

Despite this history, many Métis communities, both historically and today, possess strong cultural ways and intact languages and practice unique cultural traditions, ceremonies, and ways of life on the land through the use of the Michif language, by enjoying Métis foods and fiddle music, and from their connection to hunting, fishing, and honouring the land and all of creation. My Métis relatives hunted deer and caught fish in the South Saskatchewan River for their families and community, and, in the 1870s through to the 1930s, my Métis aunties and grandmothers still carried the knowledge of the local plants that were used for food and medicine within the community.

¹³⁶ See for example, Howard Adams, *Otapawy! The Life of a Métis Leader in Own Words and In Those of His Contemporaries* (Saskatoon: Gabriel Dumont Institute, 2005).

The English Métis communities, along with the French Métis, were concerned about land rights to their river lots when they sent for Louis Riel to come from Montana and help them deal with the Dominion government.¹³⁷ In discussions leading up to the resistance, many English Métis advocated for neutrality and were reluctant to shed any blood, despite a similar intention to redress their grievances.¹³⁸ Culminating in 1885, the Northwest Resistance was a hard-fought battle by Métis peoples for their land rights, as non-Indigenous settlers were swiftly moving into their Saskatchewan River territory. During the late 1800s, especially after the Resistance in Batoche in 1885, and arguably lasting until the 1960s and 1970s, publicly claiming one's Métis identity continued to be a dangerous proposition.¹³⁹ Our communities remained in a precarious place, as our kinship relationships had been shattered through the incursions of religious missions and forced dispersals, denigrating our relationship and obligation to the lands, our communities, and our traditional understanding of respect for families and each other.

Family

My Métis grandfather, Cecil Edward, married my grandmother, Kathleen Pirie, who is of Scottish-Irish heritage. My grandparents had two daughters; my mother, Helen Faye Corrigan was the oldest. Helen Faye married my father, Amadeo Mike Flaminio, who, with his parents, immigrated to Ontario from the province of Abruzzo in Italy in the 1950s. My parents lived in

¹³⁷ Paget, *supra* note 135 at 86.

¹³⁸ *Ibid* at 98.

¹³⁹ *Ibid* at 76. Paget discussed the pressures after 1885 for certain Métis peoples to abandon their ethnic identity and to “pretend to be white” if the economic hardships were too severe.

Ontario for the first years of their marriage before moving to be near my mother's relatives in Prince Albert, Saskatchewan.

All the descendants of my Halfbreed¹⁴⁰ grandfather have experienced the detrimental effects of colonial legal impositions, whether or not they name their life experience as such. Our family, like many Halfbreed families, had effectively lost the bundles and related teachings, songs, and ceremonies that are contained within *awasisak*, *kaytayak*, *iskwewak*, and *napewak*. Many of us, including our grandparents, had been programmed to feel denial and shame for practicing, using, and living our Cree and Métis songs, ceremonies, beliefs, and life ways.

The ravages of alcohol were also generationally inherited, nearly breaking apart many of our families, including my own. Our Cree, Saulteaux, Michif, and Bungee languages were almost extinct within some Métis families and communities, with English dominating our minds, speech, and ways of being in the world. Sexual abuse, brought to us through the missions and colonial schools, has had a brutal and heart-wrenching rippling effect on our family spirit, well-being, kinship boundaries, and integrity. Without land, language, relations, or ways of life, many of us walk lost and broken.

My grandfather speaks fondly, however, of his days growing up with his grandparents near St. Louis, where he hunted, fished, and trapped in the area. My grandfather remembers his own grandfather teaching him how to hunt rabbits, prairie chickens, and partridges, as well as the praise he often received from his grandfather after a good hunt. His grandmother, Maria Corrigan, was a local midwife who brought many of the babies into the world in their

¹⁴⁰ Also known as "Country born," "Anglo-Métis," or "English Halfbreed." At that time, Halfbreed people, like the Métis, were a mix of European and Indigenous heritages. Halfbreed people from my area were often of Scottish heritage, mixed with Cree and Saulteaux heritage.

surrounding area between 1900 and 1934. In the Depression days of the late 1920s and into the 1930s, the families who had just birthed a new baby often paid her with gifts of food, such as chickens or vegetables. My grandfather remembers the love he felt for his grandmother, and still talks about the herbal remedies and treatments that she prepared when illness struck a family or community member.

My grandfather's mother, Edith Mary Corrigan, was the youngest of six children born to Maria and William Corrigan in 1904 in Halcro. Edith Mary gave birth to a son, my maternal grandfather, Cecil Edward Corrigan. The identity of his father was unknown. Cecil Edward was the oldest of three sons, born in 1924 in the small Métis town of St. Louis. Edith Mary, my grandfather's mother, married and moved with her new husband and her two youngest sons to British Columbia in the 1930s. She left Cecil Edward to be raised by Maria and William near St. Louis.

His grandmother, Maria, provided for him and nurtured my grandfather until she died in 1934, when my grandfather was only ten years old. My grandfather continued his school and work on the farms, but, as I can only imagine, swiftly wanted to leave the political, racial, and religious oppression of St. Louis, as Howard Adams spoke about in his published writings. My grandfather devised a plan to leave his community by enlisting in the army by the time he was sixteen years old.

I realize now that my great-great grandmother Maria McKay's untimely death in 1934 served as a distinct breaking point in our family's kinship inheritance. With all the racial tensions and the shame, daily brutality, and discrimination living as an Anglican Scots-Halfbreed, Maria's early death represented the ultimate shattering, as she was not able to pass on all of the Cree and

Métis cultural teachings, and the sacred women's teachings to the next generation. Maria's daughter, Edith, who had moved to Chilliwack, British Columbia, also passed away at a young age. The language, history, cultural, and land knowledge died with these women, and at times I mourn the loss of those cultural teachings, along with the nurturance of the grandmothers. Neither my mother nor I received these cultural teachings that pass from mothers to daughters, yet I recognize today that despite this loss, my mother still inherited the *wahkotowin* values of caring, sharing, and maintaining one's responsibilities and obligations to family and relatives through my grandfather.

Despite suffering through his own alcohol abuse, my grandfather sobered up as a young father in his late twenties. I now see that this event—choosing to stop using alcohol—had a dramatically positive influence on successive generations within my family. His Métis daughter, my mother, lived a sober life, while I also choose to live an alcohol-free lifestyle. My grandfather has worked tirelessly for over sixty years taking the “getting sober” message to people all over North America, including to the men inside the walls of Prince Albert Penitentiary. Yet some of our family, including myself, did not fully recognize his sobriety work and did not fully honour all his community contributions. It was only as an adult, through discussions with my teacher Maria Campbell, that I realized that my grandfather was a leader in the healing movement, working to help people stop using alcohol and to follow a healthy living plan, and that this was a central part of the healing journey of many Indigenous peoples in and around Prince Albert.

I also now realize that through the systematic and legislated destruction of Cree and Métis peoples and cultures on the prairies, my family also inherited the intergenerational historic

fallout, including the loss of our healthy relationships and boundaries with each other, leading to alcoholism, verbal violence, and sexual abuse, just as it had hit many other First Nations and Métis families and communities. Yet, through the pain, we also inherited the love, generosity, sharing, and caring integral to our kinship relationships.

Self

As mentioned above through the *wahkotowin* circles, each individual inherits the history of their nation, community, and family. I inherited the destructive shattering events, but also gifts that were passed down from my family and community. In that light, I am grateful that the colonial residue that I carry is not as heavy as what some of my relatives have experienced. My parents or grandparents, for example, did not attend a residential school, nor were they directly affected by foster care apprehensions. On the other hand, we did inherit the deep pain associated with a loss of lands, languages, and cultural teachings, including the traditional songs, stories, and ceremonies, the detrimental effects of sexual abuse, and, subsequently, the wrath of alcohol.

After marrying, my mother, Helen Faye Corrigan, and my father, Amadeo Mike Flaminio, lived near my father's large family. My sister and I were both born in Ontario, and for the first five years of my life we lived near my father's extended Italian family, enjoying many healthy aunts and uncles and strong Italian grandparents. At the age of five, we moved to Saskatchewan. The lands, trees, and waters around Saskatchewan immediately felt like I was home again. I spent most of my school years in Prince Albert, Saskatchewan, near my mother's Métis-Scottish family. I have many good memories of positive school activities and role models in Prince Albert. I also cherished close relationships with women in my family, including my sister, my

mother, and both my maternal Scottish-Irish grandmother and great-grandmother in Prince Albert. It was likely those positive kinship relationships that guided me towards my own goals and good life, *miyo pimacihewin*.

Prince Albert was especially torn apart and traumatized as a community by the effects of the colonial enterprise upon Aboriginal communities and families on the prairies, along with the overt racism and oppression. As a child, it affected me immensely to see Cree, Dene, Saulteaux, Dakota, and Métis people suffering. I realize now that many of the people suffering on the streets were, from a *wahkotowin* relational way of living, a part of my family and community, but as a child I was disconnected from the traditional thinking that these were my relatives. As a child, I tried to pretend in some way that I was not witnessing this brutal suffering, yet I continued to feel the racial and oppressive tension of growing up in this place. I experienced shame every time an Indigenous child or adult was shamed. And I felt more shame when I did nothing. Despite all the education and understanding that I acquired as an adult, whether through university courses or work experiences, this pain and shame remains difficult to articulate. I recognize that I was a child trying to make a wise decision related to my safety. It was not that I was fearful of physical violence, but rather, as a child and adolescent, it was the violence of being hated, laughed at, and ignored for being who I was as a Métis person.

Although I inherited many healthy gifts from my family, Image 3 outlines some of the unhealthy traumatic residue inherited by my nation, community, family and self. The image of “My Broken Circle” depicts certain systemic and colonial intrusions and the intergenerational losses upon my spirit, including the impositions of alcohol, sexual abuse, religion, and racism,

intertwined with the losses of cultural teachings, language, and relationships with the land and all of creation.

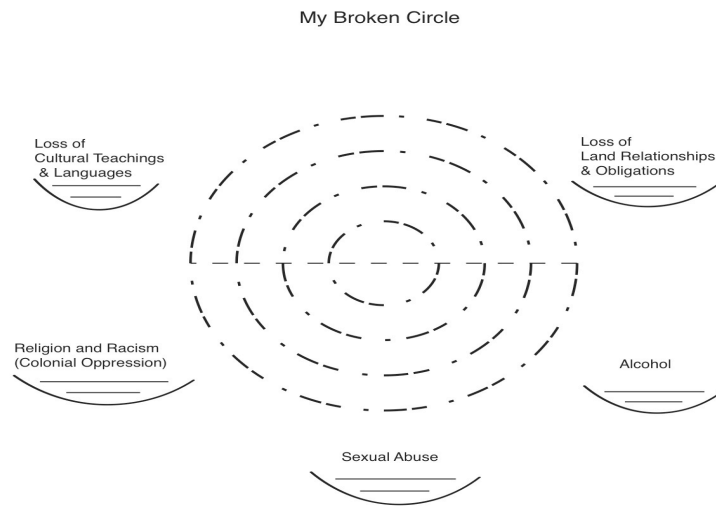


Image 03

While my childhood consisted of many happy moments, I personally experienced a number of traumatic life events, including childhood sexual abuse and the effects of extended family alcoholism. As I review my childhood, I can see that some of our family and community were disconnected and disenfranchised on a number of levels from our cultural ways. My grandfather's children and grandchildren, including myself, mainly only speak English and have effectively lost any direct connection to our Michif, Bungee, Cree, or Saulteaux languages. Our family and community have lost most of the cultural traditions and ceremonies, and, in general, do not practice sweat lodge or sundance ceremonies. Western medicine replaced the strength of

the Métis midwives, while the plant medicine knowledge ceased to be passed down to the younger generation. After Maria McKay Corrigan passed away in 1934, the cultural ceremonies, sacred knowledge, healing ways, and plant knowledge were not fully passed down to the next generation. The men, women, and children had effectively lost that integral relationship with, and the teachings and stories of, the old ones.

Despite experiencing deep pain associated with the above losses and abuses, I am thankful for the spiritual and emotional guidance provided by my family, counselors, and elders. My family was relatively healthy, and I am grateful to have had a sober Métis grandfather and mother. Métis values were passed down to us, such as caring and kindness for your family. I also must recognize that I did not suffer through hunger, cold, or direct discrimination because my family's middle-class privilege most likely shielded me from directly experiencing, or fully understanding as a child, the systemically imposed destructive pain forced upon my Indigenous relatives. As an adult, I realize now that our small Métis family was part of a privileged minority, as my Métis grandfather was one of the few successful Métis business owners in Prince Albert, while my Métis mother also ran a relatively successful business with my father. I acknowledge, as the elders remind me, that this privilege allowed for opportunities and comforts that many of my Métis relatives did not experience: comfortable housing in safe urban areas, more than ample food and warmth, new clothing, travel, and educational opportunities. I am also aware that sufficient monies can often allow a person better access to healing resources to counter the emotional and spiritual losses of colonization.

Healing and Restorative Solutions: Learning Traditions

As *wahkotowin* reminds me, children inherit all the gifts, including the pain, of the older generations. It was only when I reached my twenties that the onslaught of painful emotions and memories began to rise to the surface. At that time in my life, I had to search out helpers in the form of counselors, teachers, and Indigenous elders who could guide me through this traumatic period and help me find healing resources. Very early in my adult life, I recognized that retrieving Indigenous knowledge and connection with the Indigenous community was what I needed most in my life. I felt disconnected from my community as a child. As I grew into an adult, I began to feel a stronger pull to reconnect with my extended family and community, and to connect again with my identity and culture. I had to search it out, looking for cultural community in both my personal relationships and in my work.¹⁴¹

After studying and later graduating with a Bachelor of Social Work, I worked with several non-profit organizations in Saskatoon that worked with First Nations and Métis children and youth. One unique program offered the chance to “learn from within,” an addictions treatment centre designed for First Nations youth. Located on-reserve in northern Saskatchewan, Indigenous youth came from all parts of Canada. I distinctly remember the beauty and talents of each young person, while also remembering intense family and community pain and grief. I realized that the pain of sexual and physical abuse within the family and community, for example, could not be categorized as simply an individual issue. It was not merely an issue of

¹⁴¹ Winona Wheeler, “Social Relations of Indigenous Oral Histories” in Ute Lischke & David McNab, eds, *Walking a Tightrope: Aboriginal People and Their Representations* (Waterloo: Wilfred Laurier Press, 2005) [Wheeler] (Wheeler acknowledges that Cree education is based on reciprocal relationships and that this knowledge “comes with some degree of personal sacrifice” at 199).

family trauma, and it was not due solely to the contemporary dysfunction within the community. It became clear that the pain I was witnessing among Aboriginal youth was the direct result of intergenerational and collective trauma caused by destructive colonial, and present-day, laws, legislations, and policies imposed on each of their nations and communities. From a *wahkotowin* perspective, I began to understand that this violence had been imposed on our communities, and effectively dismantled our healthy family boundaries, nearly destroying our family and community kinship relations. I was beginning to see that it was not who I was, or who the youth were, but a destructive force that had brutally shaken all of our spirits.

The most effective and beloved part of this program was the elders' visit each week. *Mooshum* would come to the treatment centre for one week, and *Kookum* would visit the youth the following week. *Mooshum*'s sense of humour and storytelling, with his ability to weave a life lesson into the funniest story, always got the attention of the staff and youth. *Kookum*, with her strict and loving demeanor, was always ready to share her gentle straight-talk while working on a quilt or handmade project. She would often light sage and explain ways of letting go of fears and accepting ourselves, or she would sit with us and remind us how important it is to dance more and enjoy life. The elders provided a sense of balance and connection to the youth and staff who worked at the treatment centre. They held talking circles, sweat lodge, and other ceremonies. They also found the time to be available to staff members who either wanted to learn more about a traditional teaching or were simply having a hard day.

In 1996, I began a more conscious journey to rebuild *wahkotowin*, to learn about the cultural ceremonies as a way to reconnect myself with who I am, and as a way to honour and

reconnect with my ancestors. I began attending sweat lodge ceremonies with elders in the Saskatchewan area and got to meet new relatives who took part in traditional ceremonies.

Thinking of Law School: Moving into a Larger Circle

In my last year working at the youth treatment centre, I decided to apply to law school in an attempt to better understand the intergenerational trauma affecting the youth and possibly find more comprehensive policy solutions. At times, I felt the practice of social work was limiting in my work with Indigenous youth, as they were often dealing with more complex and unhealthy family and community circumstances. I also knew that on a deeper level, none of us working at the youth treatment centre could “cure” the bigger systemic or legal issues. I understood that on-the-ground family and community issues stemmed from wider systemic and colonial projects such as residential schools, which brutalized Indigenous nations and families.

My decision to attend law school was also influenced by the case of a young girl from a Dakota First Nation in Saskatchewan. She was just twelve years old and had been charged with arson. It was found that she had experience with inhalant abuse, and the young girl was sentenced by the Provincial Court of Saskatchewan to attend a treatment centre.¹⁴² She had also been diagnosed as a child with Fetal Alcohol Syndrome. The Honourable Judge Mary-Ellen Turpel-Lafond¹⁴³ was pushing for innovations in the youth criminal justice system, and was exploring treatment and supervision alternatives for youth with FASD and addiction issues. Turpel-Lafond argued that these young people had a disability, and that often they could not

¹⁴² *R v M.L.* [2000] SJ No 17 (Sask. Youth Ct.) [*M.L.*].

¹⁴³ Mary-Ellen Turpel-Lafond is on leave from the Provincial Court of Saskatchewan and presently holds the role of the Representative for Children and Youth in Victoria, British Columbia.

understand the concept of deterrence.¹⁴⁴ The young girl was sentenced to our addictions treatment centre for four months.

The young girl's happy disposition and beautiful spirit deeply affected me, but it was also the nature of the criminal law intersecting with her young life that proved life-changing for me. The treatment-centre staff had to adhere to an innovative court-ordered condition¹⁴⁵ of bringing the young girl to the city for regular meetings with a large group of professionals, including a psychologist, social workers, police, a treatment-centre staff member, her family, and local Indigenous elders. This group was tasked with supporting the young girl and creating a more holistic plan for her and her family. I was impressed that all these professionals, who rarely came together for any person charged or sentenced, let alone the case of one youth, were ordered to find a better way for this young child. I was moved that they were inquiring into who she was, what she enjoyed, what her strengths were, and how she could best succeed, along with that of her family, after finishing treatment.

I was very much influenced to attend law school by Judge Turpel-Lafond, who had envisioned this unique court order. Her decision to fight for the life and healing of this young person, and other similar young Indigenous people who required more holistic community healing options, was inspirational to me, and still is today.

¹⁴⁴ *M.L. supra* note 142 at para 46.

¹⁴⁵ The Saskatchewan Court of Appeal, one year after the *M.L.* decision, ruled against Judge Turpel-Lafond in another youth FAS case. The case originally contained an innovative probation order for a First Nations youth with FAS, directing that a youth worker with special FAS training be assigned to the youth in order to prepare a case plan and report back to the judge. The SKCA held that the youth court judge did not have the jurisdiction to order how the province performs its responsibilities. See *R v K(LE)*, [2001] SKCA 48 (CanLII), 153 CCC (3d) 250; 203 Sask R 273.

Although that inspiration stayed with me, I remember feeling disillusioned during my first year of law school and wanting to quit. Maria Campbell encouraged me to continue my law school path, and also to remember who I was—a Cree-Métis woman. She reminded me that unless an Indigenous student remembers who they are and where they come from, as well as their obligations to land, family, and community, law school can have the potential to cut off Indigenous ways of thinking and being, and to promote an allegiance to a foreign set of laws. She helped me remember that the elders want us to know both sets of laws, for us to take that strength into the future. I had to continue honouring who I was by visiting elders, going to ceremonies, and staying connected to the Indigenous community.

Although I was becoming more grounded by attending ceremonies and working with elders, it was terrifying to learn, just before attending law school, about Native men freezing to death¹⁴⁶ in Saskatchewan while in police custody. I was also attending law school when I heard for the first time about missing and murdered Native women whose remains were found on a pig farm in British Columbia.¹⁴⁷ What was happening to Indigenous people in Saskatoon and Vancouver, and across these territories, shook me to my core, and the inaction, denial, and brutal systemic violence continues to be shocking and disheartening to this day.

Just prior to my entrance to law school, the Supreme Court's *Gladue* decision was released. The decision pushed for judges to consider the systemic "social histories"¹⁴⁸ of each

¹⁴⁶ David Roberts, "RCMP add 1990 death to Saskatoon police probe," *Globe and Mail* (24 February 2000) online: The Globe and Mail <v1.theglobeandmail.com/series/apartheid/stories/globe20000224.html>.

¹⁴⁷ Gary Mason, "Missing women: the blood on our hands" *Globe and Mail* (20 December 2012) online: The Globe and Mail <www.globeandmail.com/commentary/missing-women-the-blood-on-our-hands/article6579722>.

¹⁴⁸ *Gladue*, *supra* note 1 at para 67.

Aboriginal person during the sentencing process, and to explore restorative justice¹⁴⁹ sentencing options. Coming from a place like Prince Albert, which administers a federal penitentiary, two provincial jails, and a youth jail, and has arguably created an industry out of jailing my relatives, I saw, along with many other Indigenous advocates, the chance within the *Gladue* decision to create real change within the criminal justice system, and a greater opportunity for healing and rebuilding within Indigenous nations, communities, and families. I believed that *Gladue*'s application could be widened to be applied across the spectrum of the criminal justice system, and could potentially give more weight to Indigenous ways of healing and justice.

Finding My Way Home

After graduating from law school, I worked with Indigenous elders on the West Coast who had attended residential schools. I worked as a crisis-line counselor and then moved into the role of helping elders fill out their Alternative Dispute Resolution legal claims, which documented systemic physical and sexual abuse and other abhorrent and destructive experiences. After some time performing this work, I decided to move to Manitoba to assist residential school survivors with their civil claim statements. I learned that the painful, abusive, and destructive assaults on children were much more horrific and expansive than the public was first aware.

Through my choice to move back to the prairies, I came to realize the importance of learning about culture and spirituality through ceremonies and the teachings of elders. I was learning that this knowledge and way of life was related to our continued healing and survival as Indigenous peoples. At that time, I began my cultural education with a respected Anishnaabe

¹⁴⁹ *Gladue*, *supra* note 1 at para 71.

elder, Randy Huntinghawk, who taught me about the sweat lodge ceremony, the commitment required to partake in the sundance ceremony, and teachings about the roles, responsibilities, and obligations to relatives, the earth, and all beings. With his support, and that of his family and helpers, I chose to make a commitment to sundance for four years.

I also met the late Rita Parenteau, a Dakota elder from a First Nations community near Prince Albert, and again I made a commitment to sundance in this beautiful place, near my home, in the jack pines. From both of these elders, and from both lodges, I began to learn about bigger concepts of family, and I began making a commitment to this way of life. I completed the four-year commitment to the Anishnaabe and Dakota sundance ceremony, and later decided to return home again to begin my work with my teacher, Maria, on the land near the South Saskatchewan River. This river land is where my relatives, the Métis, lived, worked, enjoyed family, and eventually fought for their lands. It is a place of beauty that envelops my spirit and helps me reconnect to the spirit of *wahkotowin*. In this land place, I feel that I belong, that I am home, with the knowledge that these traditional ceremonial ways of our people can work, along with non-Indigenous healing ways, to heal and strengthen ourselves and our nations.

Re-learning and remembering ceremonies offered me a way to understand how I could connect to the land, my relatives, and my history. Connecting with language, ceremonies, and our relationships with old ones, especially, are all ways of repairing the circles, repairing *wahkotowin*, and remembering that our individual choices can have a healing effect on our families, our communities, and our nations. In Image 4, “Healing & Resealing,” below, I outline the ways in which I rebuilt my strength and reconnected to Cree and Métis ways of life, including with culture, ceremony, and relationships with family, community, and the land.

Similar to “My Broken Circle” (Image 3), each item depicts a bundle underneath each concept. The bundle is meant to represent all that we inherit that is a part of that word or concept. For example, I inherited sexual abuse, which contains a number of traumatic effects on my physical, mental, emotional, and spiritual health. On the other hand, in the healing of my broken circle, I have chosen to inherit a reconnection with land. The bundle underneath that concept can include the reciprocal obligations that we have with the lands, plants, and animals, and an understanding of the associated songs, stories, and caretaking responsibilities.

Healing & Resealing

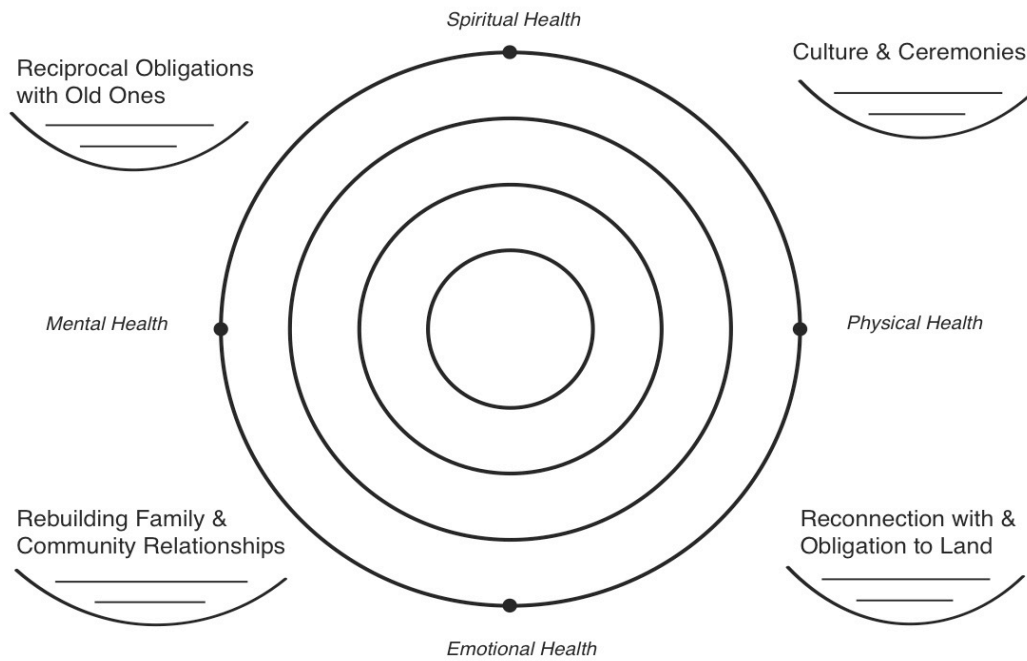


Image 04

I am just now beginning to understand how my grandfather, despite being part of the inherited pain, was also directly connected to my healing. I realize that he tried to transform that family pain and use his gifts to heal his family and community.¹⁵⁰ I see that he was creatively lending his skills to the healing and rebuilding of a broken nation as he worked in the larger community for sobriety, while also continuing to bring his family to visit our Métis family and community, essentially honouring his Métis grandmother, Maria McKay Corrigan, and her teachings of *wahkotowin*.

Summary

The purpose of this chapter was to intentionally locate myself in Indigenous place, to tell my story, tie it in with the bigger stories of my English Métis relatives, and situate myself in a specific place on the Saskatchewan River lands. Like all people, my story is interconnected with those of my relatives, the lands that they lived upon, and the larger contextual, colonial, and present-day history that includes laws, policies, and legislation. This *wahkotowin* chapter begins to acknowledge the systemic pain inflicted on each circle—men, women, old ones, and children—and the strength required to commit to the healing and rebuilding of all our kinship relationships. In understanding the laws of *wahkotowin*, it becomes possible to envision a rebuilding of each of the circles—self, family, community, and nation—and to continue the commitment to decolonizing our individual bodies, minds, hearts, and spirits. *Wahkotowin* can apply to each of us, to help us locate ourselves, name and deconstruct the colonial legal

¹⁵⁰ Wheeler, *supra* note 141 (our Cree education “strives for spiritual, mental, and physical balance and emotional well-being within the context of family and community” at 198).

impositions, and to break out of learned unhealthy behaviours, against ourselves and others, in order to live a healthy and good life.

CHAPTER 3

R v. GLADUE: APPLICATION TO EARLY RELEASE

Introduction

In this chapter, I examine whether the legal duties enunciated by the Supreme Court of Canada in *R. v. Gladue*,¹⁵¹ originally intended for judges when sentencing an Aboriginal person, are applicable to post-sentencing release plans within the federal correctional setting in Canada. I will concentrate my analysis on the Aboriginal-specific federal correctional policies that outline early release provisions for Aboriginal offenders being reintegrated back into the Aboriginal community. I will outline the intent of the *Gladue* decision, and analyze three main questions: 1) whether *Gladue* is applicable beyond sentencing to corrections and parole decisions; 2) whether *Gladue* is specifically applicable to reintegration decisions; and 3) whether *Gladue*, by extension, is applicable to Section 84 of the *Corrections and Conditional Release Act* [CCRA], the early release policy designed for federal Aboriginal offenders.

Section 84 of the *CCRA* sets out legal obligations for the successful early release of a federally incarcerated Aboriginal offender. At the intersection of federal corrections and parole policies, Section 84 of the *CCRA* focuses on an Aboriginal community's role during the early release of a federally sentenced Aboriginal offender. Section 84 is based on the premise that Aboriginal community participation is an effective way to restore balance and apply the

¹⁵¹ *Gladue*, *supra* note 1.

principles of restorative justice¹⁵² in cases that involve Aboriginal offenders and communities.

Section 84 of the *CCRA* advocates for increased early-release planning for Aboriginal offenders:

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community (a) adequate notice of the inmate's parole application; and (b) an opportunity to propose a plan for the inmate's release to, an integration into, the aboriginal community.¹⁵³

The legal obligation to implement the Section 84 early-release provision for Aboriginal offenders has, arguably, not been fulfilled by Correctional Service of Canada. Chronic systemic issues, as will be outlined below, have plagued early-release processes for Aboriginal offenders and the consistent implementation of Section 84 of the *CCRA*.

The obligations by the Supreme Court in *Gladue* to properly consider Aboriginal history and restorative community solutions may assist CSC in the future implementation of section 84 of the *CCRA*. To better understand the implications of the Supreme Court's historic *R. v. Gladue* decision and how it applies to federal corrections and parole in Canada, this chapter will review the historical background and intent of the *Gladue* decision.

Section 718.2(e) of the Criminal Code

The core of the *R. v. Gladue* decision contemplated the best way to implement section 718.2(e) of the Criminal Code, a sentencing principle that calls for a lessening of carceral punishment for all people, including Aboriginal peoples:

A court that imposes a sentence shall also take into consideration the following principles: (e) all available sanctions other than imprisonment that are reasonable in the

¹⁵² Correctional Service of Canada, *Reintegration Guide*, Aboriginal Initiatives Branch, at 19.

¹⁵³ *CCRA*, *supra* note 9 s 84.

circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.¹⁵⁴

Section 718.2(e) was included in the new Part XXIII of the *Criminal Code*, enacted in 1996, and was intended to help guide the Supreme Court by codifying the purpose and principles of sentencing.¹⁵⁵ The intent of s. 718.2(e) is to consider crafting a restorative sentence that may eventually lead to decreased levels of incarceration for all people, particularly Aboriginal peoples.¹⁵⁶

The Supreme Court analyzed the legislative history and context of the s. 718.2(e) enactment, and emphasized the then-Justice Minister's comments concerning the remedial intention of Bill C-41:

When appropriate, alternatives must be contemplated, especially in the case of Native offenders. ... Alternatives should be put in place for those who commit offences but who do not need or merit incarceration. ... This bill creates an environment which encourages community sanctions and the rehabilitation of offenders together with reparation to victims.¹⁵⁷

The Supreme Court reviewed the proposed Bill C-41¹⁵⁸ and declared that s. 718.2(e) should be interpreted as having a “remedial purpose”¹⁵⁹ in terms of addressing the over-incarceration crisis, with sanctions that focus on Aboriginal-centered community justice.¹⁶⁰

¹⁵⁴ *Criminal Code*, *supra* note 3 at s 718.2(e).

¹⁵⁵ *Gladue*, *supra* note 1 at para 1.

¹⁵⁶ *Ibid* at para 77.

¹⁵⁷ *Ibid* at paras 45–46.

¹⁵⁸ *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, SC 1995 c 22 (Bill C-41).

¹⁵⁹ *Gladue*, *supra* note 1 at para 33.

¹⁶⁰ The Supreme Court focused on the concept of restorative justice to connote community measures that could provide for the healing and restoration of an Aboriginal person within the community.

Jamie Gladue

The accused, Jamie Tanis Gladue, is a Cree-Métis woman who grew up in the small town of McLennan in northern Alberta (Treaty 8). Within a month of moving to Nanaimo, British Columbia in 1995, Jamie and her family were celebrating her nineteenth birthday. On that evening, after continuous alcohol consumption, a verbal fight ensued between Jamie and her common-law partner based on accusations that he was having intimate relations with her sister. The incident culminated in a violent stabbing incident that led to the death of her partner. Jamie Gladue was charged with manslaughter and sentenced to three years incarceration.

The Supreme Court framed the over-incarceration of Aboriginal peoples as a “crisis”¹⁶¹ within the criminal justice system. Sadly, as noted by prominent legal scholars, such as Professor Kent Roach, ten years after the release of the once-celebrated *Gladue* decision few sizeable systemic innovations have been employed since the decision’s release, while in some provinces, such as Saskatchewan, Crown appeals of Gladue-inspired sentences have been much more frequent and successful, often mistakenly focusing on the seriousness of the offence rather than the unique social history of each Aboriginal accused.¹⁶²

¹⁶¹ *Gladue supra* note 1 at para 64.

¹⁶² See Kent Roach, “One Step Forward, Two Steps Back: *Gladue* at Ten and in the Courts of Appeal” (2009) 54 Criminal Law Quarterly 470 at 471—473 [*Roach*]. Also see Jonathan Rudin, “Addressing Aboriginal Overrepresentation Post-*Gladue*: A Realistic Assessment of How Social Change Occurs” (2009) 54 Criminal Law Quarterly 447 [*Rudin, Overrepresentation*].

Framework of Analysis

The Supreme Court in *Gladue* asserted that judges must alter the usual method of analysis¹⁶³ when sentencing Aboriginal offenders. *Gladue* provides a specific “Framework of Analysis”¹⁶⁴ when assessing the case of Aboriginal offender during sentencing:

(A) The unique systemic and background factors which may have played a part in bringing the particular aboriginal offender before the courts; and

(B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.¹⁶⁵

Gladue requires judges to employ a broad approach where an individual’s life circumstances are understood through a familial, community, historical, and societal lens. The Supreme Court enunciated some general considerations:

The circumstances of aboriginal offenders differ from those of the majority because many aboriginal peoples are victims of systemic and direct discrimination, many suffer the legacy of dislocation and many are substantially affected by poor social and economic conditions. Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be “rehabilitated” thereby, because the internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions.¹⁶⁶

The remedy provided by the Court to rectify historic discrimination and colonization involves a legal duty to gather the systemic background evidence for all Aboriginal peoples.

¹⁶³ *Gladue*, *supra* note 1 at para 33.

¹⁶⁴ *Ibid* at para 66.

¹⁶⁵ *Ibid*.

¹⁶⁶ *Ibid* at para 68.

***Ipeelee*: Widening the Scope of Gladue**

The Supreme Court of Canada in *R. v. Ipeelee*¹⁶⁷ broadened the analytical scope of *Gladue*. The decision recognized that criminal actions by Aboriginal peoples are often directly related to the legacy of colonialism.¹⁶⁸ The *Ipeelee* decision added clarity to the *Gladue* decision, stating, “[T]o be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools.”¹⁶⁹ Furthermore, the courts must recognize “the inter-generational effects of the collective experience of Aboriginal peoples.”¹⁷⁰ The *Ipeelee* decision outlined the importance of gathering the social and historical evidence related to each Aboriginal accused person into a Gladue Report:

[I]t appears that case-specific information is often brought before the court by way of a Gladue report, which is a form of pre-sentence report tailored to the specific circumstances of Aboriginal offenders. Bringing such information to the attention of the judge in a comprehensive and timely matter is helpful to all parties at a sentencing hearing for an Aboriginal offender, as it is indispensable to a judge fulfilling his duties under s. 718.2(e) of the Criminal Code.¹⁷¹

Ipeelee recognized that providing contextual history within a Gladue Report is imperative when deciding cases relating to an Aboriginal person.

The SCC clarified that although levels of criminality are often linked to the legacy of colonialism, there is *no evidentiary burden for an Aboriginal accused to establish a causal link*¹⁷² between the systemic factors and the criminal background or present offence.¹⁷³ The

¹⁶⁷ *R v Ipeelee*, 2012 SCC 13 [*Ipeelee*]. The Supreme Court considered the cases of two Aboriginal men, analyzing whether *Gladue* principles apply to breaches of long-term supervision orders.

¹⁶⁸ *Ibid* at para 77.

¹⁶⁹ *Ibid* at para 60.

¹⁷⁰ *Ibid* at para 82.

¹⁷¹ *Ibid* at para 60.

¹⁷² *Ibid* at para 82. I italicize this section to emphasize that although there may be causal connections between the present offence and a person’s life circumstances, decision-makers, including judges, do not need to make a direct

Supreme Court also reiterated that a legal duty exists to apply *Gladue* principles in all cases, including those that are considered serious, emphasizing that “a failure to do so constitutes an error justifying appellant intervention.”¹⁷⁴

Social History

Gladue requires that a decision maker consider the unique systemic background and social history of each Aboriginal person, and to analyze the case of an Aboriginal offender individually, yet also differently.¹⁷⁵ *Gladue*’s framework of analysis model is relatively scant on specific instructive details¹⁷⁶ for analysis of the contextual history of an Aboriginal person. Instead, it is left to lawyers, judges, and criminal justice staff to ascertain which systemic and historic information may be important when gathering evidence, and to assess how the historical evidence should be properly analyzed and applied in each case.

After the Supreme Court of Canada’s *Gladue* decision was released in 1999, Provincial Court of Saskatchewan Judge Turpel-Lafond provided much-needed clarification to judges and defence counsel who were beginning to learn about their new duties regarding *Gladue* principles. The judge offered more detailed criteria to consider when upholding the duty to consider relevant

causal link between the present offence and the background *Gladue* factors within their life. *Gladue* will still apply in all cases, whether or not there is a causal link).

¹⁷³ *Ibid*; see also *R. v. Collins*, 2011 ONCA 182, 277 OAC 88 at 32–33.

¹⁷⁴ *Ibid*.

¹⁷⁵ *Gladue*, *supra* note 1 at para 68. See also Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2007) (Macklem argued that four social realities are exclusive to Aboriginal peoples, and are evidence of “Indigenous difference”: 1) Aboriginal peoples belong to distinctive cultures that are threatened by non-Aboriginal cultures and beliefs; 2) Aboriginal people lived in and occupied North America prior to European contact; 3) Aboriginal peoples exercised sovereign authority over their territory and peoples prior to contact; and 4) Aboriginal peoples have engaged in treaty processes between nations and the Crown at 4).

¹⁷⁶ *Ibid* at para 69.

historic background and contextual factors in the case of an Aboriginal offender.¹⁷⁷ Just after the Supreme Court rendered its decision, Judge Turpel-Lafond provided more specific *Gladue* guidelines and relevant historical topics that should be considered:

- Has this offender been affected by substance abuse in the community?
- Has this offender been affected by poverty?
- Has this offender been affected by overt racism?
- Has this offender been affected by family or community breakdown?
- Has this offender been affected by unemployment, low income, and a lack of employment opportunity?
- Has this offender been affected by dislocation from an Aboriginal community, loneliness, and community fragmentation?
- Has the offender been affected by residential school education?¹⁷⁸

Judge Turpel-Lafond's instructional *Gladue* article can be described as a foundational document that provided the legal community with a model of inquiry to explore the contextual family and community history of each Aboriginal person. We must be cognizant that this specific set of social history factors was developed soon after the release of Supreme Court's *Gladue* decision. With the benefit of *Ipeelee*, the requirements have now expanded to properly conduct a comprehensive *Gladue* inquiry and to obtain specific *Gladue* evidence.

In Chapter 4, I will review the interview data and discuss which social history topics should be reviewed with an offender, where to add more specific and more positive historical information, and will consider how those topic areas can be discussed in a unique and conversational manner. In Chapter 5, I will envision how the *Gladue* legal duty to gather social history evidence can be best fulfilled through a Cree relational way of relating with and

¹⁷⁷ Judge Mary-Ellen Turpel-Lafond, "Sentencing within a Restorative Justice Paradigm: Procedural Implications of *R. v. Gladue*" in Wanda D. McClaslin, ed., *Justice as Healing: Indigenous Ways. Writings on Community Peacemaking and Restorative Justice from the Native Law Centre* (St. Paul, MN: Living Justice Press, 2005) [Turpel-Lafond] at 280.

¹⁷⁸ *Ibid* at 285.

interviewing an Indigenous person. I will further address how a *wahkotowin* approach can allow us to look at the positive aspects of, and constructive events connected with, an Indigenous nation's history, while also considering the oppressive agendas and destructive fallout experienced by specific Indigenous nations and communities. In the remainder of this chapter, I will consider *Gladue*'s applicability to reintegration, and review the ways in which federal corrections and parole are honouring their legal duty to conduct *Gladue* inquiries and how they can properly apply the unique *Gladue* historical evidence to daily correctional and parole decisions.

***Gladue* Application in Corrections and Parole**

Whether *Gladue* is Applicable Beyond Sentencing to CSC and PBC Decisions?

The first issue to consider is whether *Gladue* is applicable beyond sentencing to federal corrections and parole. Notwithstanding the case law, CSC has effectively conceded the point that *Gladue* factors apply throughout the correctional continuum,¹⁷⁹ and has endorsed their commitment by explicitly requiring *Gladue* social history to be considered when making correctional decisions. CSC acknowledges that the scope of *Gladue* extends its reach to post-sentencing decisions into all stages of the criminal justice system, from bail to the eventual parole release of an Aboriginal offender.¹⁸⁰ The commissioner's directives within CSC set out detailed policies and procedures for staff members. Commissioner's Directive 702 [CD 702], for

¹⁷⁹ Clare McNab, "Gladue and Prison" (Talk delivered at the 3rd National Conference on Aboriginal Criminal Justice Post-*Gladue*, Toronto, Ontario, 30 April 2011) [McNab].

¹⁸⁰ *Ibid.*

example, outlines policies and procedures generally relating to Aboriginal offenders. Section 9(e) of CD 702 outlines the responsibility of the Institutional Head to uphold *Gladue* principles and to “ensure that the unique circumstances of the Aboriginal offender, as described in the definition of Aboriginal social history, as well as Aboriginally-responsive options are considered in the decision making process.”¹⁸¹ Annex B of Commissioner’s Directive 702 includes “Aboriginal Social History” considerations that must be assessed for each Aboriginal offender:

- effects of residential school system (offender as survivor or inter-generational effects from family’s historical experiences)
- sixties scoop into the adoption system
- effects of the dislocation and dispossession of Inuit people
- family or community history of suicide
- family or community history of substance abuse
- family or community history of victimization
- family or community fragmentation
- level or lack of formal education
- level of connectivity with family/community
- experience in child welfare system
- experience with poverty
- loss of or struggle with cultural/spiritual identity;
- exposure to, or membership with street gangs/Aboriginal gangs/criminal organizations¹⁸²

CSC reiterated its commitment that the Aboriginal social history principles are to be considered at every level of decision making involving an Aboriginal offender.¹⁸³ Despite this legal directive, it may be challenging for CSC and NPB to properly analyze and implement their legal obligations under *Gladue* until the social history topics are amended to include a wider range of

¹⁸¹ Commissioner’s Directive 702, online: Commissioner’s Directive 702 <<http://www.csc-scc.gc.ca/text/plcy/cdshtm/702-cde-eng.shtml>> [CD 702] (The “Definitions” section of CD 702 sets out a non-exhaustive list of “Aboriginal social history” circumstances).

¹⁸² CD 702, *supra* note 183 at Annex B.

¹⁸³ Correctional Service Canada, *Response of the Correctional Service of Canada to the 37th Annual Report of the Correctional Investigator*, 2009–2010, 5 November 2010, online: Office of the Correctional Investigator <<http://www.oci-bec.gc.ca/comm/presentations/presentationsAR-RA0910-eng.aspx>>.

past and present colonial policies, programs, and legislation that have impacted, and are still impacting, specific Indigenous nations. From a *wahkotowin* lens, the social history topics also need to include a directive to properly research and consider the positive and unique history of each Indigenous person's family, community, and nation. Although it appears that CSC and NPB have conceded that the *Gladue* principles are legally applicable to decision making involving an Aboriginal offender, the effect of any *Gladue* social history policy could be nullified unless staff members are fully trained on the specific colonial history of each Indigenous nation and community, including the intergenerational historic trauma that has affected each offender.

Whether *Gladue* is Specifically Applicable to Reintegration Decisions?

Commissioner's Directive 702 sets out the *Aboriginal Corrections Continuum of Care*,¹⁸⁴ introduced in 2003, which outlines Aboriginal cultural interventions throughout all phases of corrections, from intake to reintegration. The *Continuum of Care* states that Aboriginal culture and spirituality must be integrated within the four phases of the corrections continuum:

- a. starts at intake, to identify Aboriginal offenders and to encourage them to bridge the disconnect with their culture and communities;
- b. leads to paths of healing in institutions to better prepare Aboriginal offenders for transfer to lower security and for conditional release;
- c. engages Aboriginal communities to receive offenders back into their community and support their reintegration; and
- d. ends with establishment of community supports to sustain progress beyond the end of the sentence and prevent re-offending.¹⁸⁵

¹⁸⁴ CD 702, *supra* note 183 at Continuum of Care.

¹⁸⁵ *Ibid.*

The correctional phases of the *Continuum of Care* included in CD 702 strengthen the argument that *Gladue* social history principles and community reintegration goals are naturally applicable to an Aboriginal offender's release and community reintegration phase.

The scope of *Gladue* has been notably widened in the Ontario Court of Appeal.¹⁸⁶ The judge's decision in *R. v. Jensen*¹⁸⁷ states that *Gladue* applies to all cases when an Aboriginal person is the offender.¹⁸⁸ *R. v. Sim*¹⁸⁹ was another seminal case decided by the Ontario Review Board that considers *Gladue*'s applicability for reintegration. This decision can arguably be applicable to all reintegration decisions within CSC and the NPB. In *Sim*, a Cree man suffering a mental health condition was held "not criminally responsible" for theft under \$5000.¹⁹⁰ The Honourable Justice Sharpe, for the majority, analyzed whether the Ontario Review Board [ORB] has a positive duty to consider the unique *Gladue* factors connected with being an Aboriginal person when deciding on the release of a not criminally responsible offender.¹⁹¹ Although Justice Sharpe stated that the ORB is not a sentencing court,¹⁹² and therefore argued that s. 718.2(e) may not directly apply to the ORB, he held that the principles of *Gladue* "have a bearing"¹⁹³ on the duties of the ORB.

If we maintain that the intent of the Supreme Court in *Gladue* was to animate section 718.2(e) by delineating two central legal duties, then it follows that if *Gladue* applies to any criminal law situation, then, logically, the legal essence of s. 718.2(e) is applicable from the

¹⁸⁶ *Roach, supra* note 163 at 474.

¹⁸⁷ *R v Jensen* (2005), 195 CCC (3d) 14, 27 CR (6th) 240, 74 OR (3d) 561 (CA) [*Jensen*].

¹⁸⁸ *Ibid* at para 27.

¹⁸⁹ *Sim, supra* note 25.

¹⁹⁰ *Ibid* at para 2–3.

¹⁹¹ *Ibid* at para 1.

¹⁹² *Ibid* at para 12.

¹⁹³ *Ibid*.

criminal charge to the reintegration of an offender. *Sim* provides instructions that can be applied to all Aboriginal offenders throughout release and reintegration, holding that the principles underlying *Gladue* should not be limited to the sentencing process.¹⁹⁴ The decision strongly indicates that *Gladue* factors should be considered when review boards contemplate an appropriate disposition for a not criminally responsible accused.

Although the Ontario Court of Appeal dismissed the appeal, stating that the ORB's failure in this specific case to obtain *Gladue* social history information was not an error in law, the Honourable Justice Sharpe was clear that the ORB must "live up to its legal duty"¹⁹⁵ to obtain adequate *Gladue* information. *Sim* stated in the affirmative that the *Gladue* principles, or the unique social history circumstances, should be properly considered in decisions affecting the community reintegration of an offender:

I conclude that the ORB should always consider the unique circumstances of aboriginal NCR accused and ensure that it has adequate information in relation to the aboriginal background of an NCR accused to enable the ORB to assess the reintegration of the accused into society and the accused needs pursuant to s. 672.54. While I am not prepared to lay down a rigid rule to the effect that the ORB must always obtain a "Gladue report" or other similar evidence as to the particular circumstances of aboriginal NCR accused, I am prepared to say that the ORB has a legal duty to obtain such information where it would be pertinent and relevant to the disposition it is asked to make. Failure to do so would, in my view, amount to a legal error.¹⁹⁶

The Court of Appeal indicated that the criminal justice system needs to take action, to back away from a passive approach, and to adopt a more inquisitorial model¹⁹⁷ when gathering and obtaining a Gladue Report. The Court aptly summarized at paragraph 23:

¹⁹⁴ *Ibid* at para 16.

¹⁹⁵ *Ibid* at para 37.

¹⁹⁶ *Ibid* at para 29.

¹⁹⁷ *Ibid* at para 25.

Failure to advert to the unique circumstances of aboriginal offenders when making decisions relating to their reintegration into the community falls squarely within the category of systemic problems identified in *Gladue* as contributing to the failure of the criminal justice system to respond to the particular circumstances of aboriginal peoples.¹⁹⁸

The Ontario Court of Appeal was clear that decision makers must obtain this historical *Gladue* evidence and cannot unjustly assume that the needs of a non-Aboriginal accused are the same as an Aboriginal accused.¹⁹⁹ *Sim* arguably widened the scope of *Gladue* to include all situations dealing with an Aboriginal accused or an Aboriginal offender, stating that the ORB, and arguably by extension the Parole Board of Canada, has a legal duty to obtain and analyze the *Gladue* social history evidence when considering the reintegration of an Aboriginal offender back into the community. The Court of Appeal in *Sim* set out a strong argument for the scope of the legal duty to be widened by setting out a positive duty to obtain *Gladue* social history evidence in all cases dealing with the reintegration of Aboriginal offenders.²⁰⁰ The *Sim* case can readily be used by counsel to argue that *Gladue* applies to all contexts that consider the reintegration of offenders, including the parole process for Aboriginal offenders.

Based on the above argument, a strong case exists for the PBC to be legally obliged to fully consider the *Gladue* social and systemic history of Aboriginal peoples when assessing an Aboriginal offender's release application.²⁰¹ Legal consultant Mandy Wesley argued that *Gladue* evidence is fully relevant to parole decisions, stating, "In order to better assist the members in the decision making process, it would serve well to have Gladue Reports prepared specifically for

¹⁹⁸ *Ibid* at para 23.

¹⁹⁹ *Ibid* at para 24.

²⁰⁰ *Ibid* at para 23.

²⁰¹ Mandy Wesley, *Marginalized: The Aboriginal Women's Experience in Federal Corrections*, APC 33 CA (Public Safety Canada, Aboriginal Corrections Policy Unit, 2012) [Wesley].

the purpose of parole eligibility.”²⁰² The Parole Board’s policy manual²⁰³ outlines the review process for assessing pre-release decisions and delineates the measures to analyze the criminal history, social history, and conditional release history of an offender. Included within the policy manual is an assessment of the social and criminal release history, which, on its face, appears to be a *Gladue*-inspired policy, using language that matches *Gladue*’s call for consideration of systemic discrimination, community breakdown, and dislocation:

[A]ny systemic or background factors that may have contributed to the offender’s involvement in the Criminal Justice System, such as, the effects of substance abuse in the community, systemic discrimination, racism, family or community breakdown, unemployment, income, and a lack of education and employment opportunities, dislocation from his/her community, community fragmentation, dysfunctional adoption and foster care, and residential school experience.²⁰⁴

The PBC policy does not overtly acknowledge the *Gladue* principles, yet the policy language most obviously mimics the language associated with *Gladue* social history factors. PBC’s policy for the assessment of pre-release decisions does not provide substantive criteria helpful to interview a parole applicant, nor does it offer a clear methodology to analyze and apply the social history factors to an early release decision for an Aboriginal offender.

Whether *Gladue* is Applicable to Section 84 of the CCRA?

Section 84 of the *CCRA*, as an early release policy for federal Aboriginal offenders, could be considered a bridge that links the highest potential of the *Gladue* decision—community reintegration, rehabilitation, and how healing can best occur within the Aboriginal community—

²⁰² *Ibid* at 43.

²⁰³ Canada, *PBC Policy Manual*, online: Parole Board of Canada <pbc-clcc.gc.ca/infocntr/policy/polman.pdf> [*PBC Policy Manual*].

²⁰⁴ *Ibid*.

with the intention to promote more viable Indigenous-focused reintegration solutions. Yet, the commissioner's directive that lays out the Section 84 policies and procedures²⁰⁵ does not include either *Gladue*'s social history evidence-gathering obligation or *Gladue*'s promotion of restorative community sanctions for Aboriginal persons. Section 84's intention to assist communities in the early release planning of Aboriginal offenders is directly related with *Gladue*'s legal duty to consider remedial community solutions and its larger intent to interrupt the crisis of over-incarcerating Aboriginal peoples.

CSC amended their commissioner's directives in 2010 to include procedures that outline an extensive, albeit cumbersome, "Section 84 Application Process."²⁰⁶ Although the Section 84 policy steps are convoluted, time-consuming, and mired with red tape,²⁰⁷ if a *Gladue* inquiry were to be added to CD 712-1-1, the logical entry point would be at Step 12 of the "Section 84 Guidelines." Using a more expansive vision of the *Gladue* process, CSC could consider a future amendment to their directives requiring that a Gladue Report be prepared at the time of an offender's intake, regularly reviewed throughout the sentence, and revised at the time of release planning. Step 12 of the Section 84 Guidelines already describes certain procedural steps where *Gladue* principles and *Gladue* reporting could naturally be added and implemented. For example, several sub-steps within Step 12 of the Section 84 Guidelines outline who should be involved and which topics to discuss during release planning:

²⁰⁵ Commissioner's Directive 712-1-1, *CCRA Section 84 Application Process*, 2010-08-19, online: <<http://www.csc-scc.gc.ca/text/plcy/cdshtm/712-1-1gl-eng.shtml>> [Section 84 Guidelines].

²⁰⁶ *Ibid.*

²⁰⁷ Office of the Correctional Investigator, "Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act", online: (2012) at 31–34 <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut20121022-eng.pdf>> [Sapers Report].

58. In developing the release plan, the Aboriginal community should consider what type of progress the offender has made to address the factors linked to his or her offending behaviour. The release plan should maintain and complement the work the offender has done in the institution.

62. The release plan should consider the following elements in the offender's reintegration: a. programs and resources (e.g. Elders, AA meetings and Social Workers); b. employment opportunities; c. accommodations; d. community support; e. safety issues; f. monitoring of offender activities; g. expectations of the offender and the community; h. community attendance at the National Parole Board hearing; i. victim considerations; and j. need for health care and mental health services.

63. Consultation at this stage can result in numerous meetings between the ACDO, offender, ALO, IPO, CPO and the individuals identified in the Aboriginal community to assist with release planning. The consultation can also involve other CSC representatives.²⁰⁸

A comprehensive and historical *Gladue* analysis could be applied throughout the Section 84 release-planning process, most significantly at Step 12, where community release planning is outlined. A series of community meetings or healing circles could take place to discuss the goals of a *Gladue* framework of analysis: learning about the family and community history; and preparing recommendations for a community release plan. In Treaty 6 territory, for example, one Cree First Nation²⁰⁹ community has already had experience providing release healing, known as “release circles”²¹⁰ for offenders who are returning to their community. In this case, a release circle is a name given by one Cree community to describe their culture's means of conducting

²⁰⁸ Section 84 Guidelines, *supra* note 207 at 12–13.

²⁰⁹ Personal interview with Douglas Gamble, Beardy's and Okemasis First Nation, Saskatchewan, 15 April 2008. Beardy's have practical experience conducting release circles for federal offenders during their parole process. Beardy's have outlined the intent of a release circle, which is to conduct a circle ceremony that supports the parole applicant and the victim and family, and outlines community expectations for the offender if a conditional release is granted.

²¹⁰ A release circle involves bringing together family and community members in a circle setting to discuss the release and reintegration of an Aboriginal offender. A circle release planning process can take the place of the present Section 84 policy, at paragraph 61, which requires scheduled meetings or healing circles to prepare a release plan.

justice. The release circle represents this community's way of thinking about release and reintegration from a Cree worldview and the related focus on healing interconnected kinship relationships and finding healthy community release solutions. Understanding Indigenous history through a *wahkotowin* lens will allow both corrections and parole to better understand the present reality of an offender's life, and will allow them to better plan for the needs of offenders through holistic relationship-based community solutions.

Systemic Issues Blocking Gladue's Application in Corrections

Timely Release for Aboriginal Peoples

Systemic barriers to accessing timely release and meaningful reintegration can often mean that early release from prison is out of the grasp of Aboriginal offenders. Respected penal policy advocates Michael Jackson and Graham Stewart authored *Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*,²¹¹ which provided a comprehensive response to the CSC's *Roadmap to Public Safety* report.²¹² Jackson and Stewart's report reviewed the statistics and documented the reality of prison for Aboriginal people, highlighting the systemic flaws that negatively affect the likelihood of timely release for an Aboriginal person. Lack of timely release and reintegration is in direct contravention of the legal obligations held by *Gladue* to consider restorative community options. Jackson and Stewart

²¹¹ Michael Jackson & Graham Stewart, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety* (25 September 2009) online: Social Science Research Network <<http://ssrn.com/abstract=1881036>> [*Flawed Compass Report*].

²¹² CSC Review Panel, *Report of the Correctional Service of Canada Review Panel: A Roadmap to Strengthening Public Safety* (Minister of Public Works and Government Services Canada, 2007) [*Roadmap Report*].

maintained that barriers and injustices remain, and that the correctional system looks bleak for Aboriginal men and women. The authors examined the case of incarcerated Aboriginal women, in particular, and stated that the effects of any potential shift towards a true Aboriginal healing paradigm may be minimal:

[T]he over representation of Aboriginal offenders, particularly Aboriginal women, in maximum security, which means prisoners often serve their sentences far away from their family and the valuable support of other community members, friends and supports such as Elders; the absence of Aboriginal programming in maximum-security institutions limiting their ability to be transferred to lower security institutions that contributes to their being released later in their sentences than other prisoners; longer periods of incarceration and more statutory releases for Aboriginal offenders contribute to less time in the community for programming and supportive intervention than for non-Aboriginal offenders; the proportion of Aboriginal offenders under community supervision is significantly smaller than the proportion of non-Aboriginal offenders serving their sentence on conditional release.²¹³

Michelle Mann, author of *Good Intentions, Disappointing Results*,²¹⁴ supported Jackson and Stewart. Her report expressed deep concerns over limited early release opportunities for Aboriginal offenders due to chronic systemic issues within the CSC system:

Over classification and segregation and the accompanying lack of access to Aboriginal programming means that Aboriginal offenders are disproportionately impacted in their inability to obtain conditional release (parole) as they may not have been able to carry out their correctional plan and may not be perceived as significantly rehabilitated. ... [S]ystemic barriers can hinder timely and effective offender reintegration.

Jackson and Stewart pointed out that CSC's new "transformation" correctional agenda, included in CSC's Roadmap report,²¹⁵ has as its main motive limiting the "least restrictive" principle, and

²¹³ *Ibid* at xxx.

²¹⁴ Michelle Mann, *Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections*, (Ottawa: Office of the Correctional Investigator, 2009) [*Mann Report*].

²¹⁵ *Roadmap Report*, *supra* note 213.

proposes a new “appropriate measures” principle.²¹⁶ The “appropriate measures” principle, which is an earned-parole system, is completely contradictory to the mandate of *Gladue*, with its focus on the least restrictive, non-carceral options for Aboriginal offenders. As Jackson and Stewart pointed out:

Had the Panel taken seriously the importance of restorative justice principles to the reintegration of Aboriginal offenders ... the necessary restitutional attention to overrepresentation and that Aboriginal prisoners are released later in their sentences than other prisoners, how in good conscience could it recommend the elimination of statutory release without any concern that it would almost certainly mean that Aboriginal offenders will serve even more time?²¹⁷

The “transformation” agenda incorrectly seeks to justify earned parole and the abolishment of a “least restrictive measures” framework, which essentially ignores the legal duty to uphold *Gladue*.

***Gladue*’s Limited Application**

The Mann report was also skeptical about whether CSC, despite its inclusion of *Gladue* factors into certain CSC Directives, is capable of “adequately”²¹⁸ considering *Gladue* factors and whether they are “appropriately”²¹⁹ considering *Gladue* principles when making internal decisions. Mann questioned minimalist policies that do not explain how to implement *Gladue* and the lack of necessary training currently available for staff to properly analyze the *Gladue* historical factors. Mann pointed out clear concerns about the stated junctures where *Gladue* must

²¹⁶ *Flawed Compass Report*, *supra* note 214 at 158.

²¹⁷ *Ibid.*

²¹⁸ *Mann Report*, *supra* note 216 at 18. Emphasis added.

²¹⁹ *Ibid.* Emphasis added.

be applied.²²⁰ CSC and the Parole Board of Canada cannot justifiably comply with their *Gladue* legal obligations if their staff members are not adequately trained to properly interview, analyze, and write a comprehensive and accurate Gladue Report that fully details the historical information specific to each individual Aboriginal person's nation, community, and family.

CSC's commissioner's directives fail to set out a clear framework of analysis that instructs staff about the *Gladue* historical factors, the best method to analyze those *Gladue* principles, and the proper translation of the results of a *Gladue* analysis into daily correctional decisions. Without a means to properly analyze, CSC staff members appear to have limited institutional direction on how to gather specific *Gladue* information, the best manner by which to gather the information and converse with an offender about their life, the proper method of analyzing the answers to those questions, and the strongest way to apply a contextual analysis to daily custody decisions.

Assuming that *Gladue* factors are applicable throughout the *Aboriginal Corrections Continuum of Care*,²²¹ from intake to reintegration, the *Gladue* social history topics presently included in the commissioner's directives contain problematic substantive and operational issues. The *Gladue* social history factors operate as a stand-alone set of issues that could easily be misunderstood as a mere set of themed closed questions meant to evoke a one-word answer from the offender. Furthermore, the absence of a clear methodology does not allow for explicit instructions on proper interviewing techniques, family or community contact strategies, or

²²⁰ *Mann Report*, *supra* note 216 at 20.

²²¹ CD 702, *supra* note 183.

appropriate historic and contextual research modalities, thus creating a dilemma for proper *Gladue* implementation.

The *Gladue* factors contain a list of negatively themed historical events that have impacted communities, and the subsequent traumatic effects impacting communities, families, and individuals. The *Gladue* social history evidence should not be considered comprehensive or valid unless it includes the full history of imposed legislation and intergenerational effects specific to the territory where each Aboriginal person is from. Unless the *Gladue* social history also includes the positively themed history and talents associated with an Aboriginal person's family, community, and nation, a balanced and healing approach will be elusive.

Similar to the *Gladue* social history factors found within CSC's commissioner's directives, the PBC's policy wording in the "[a]ssessment of pre-release and conditional release decisions"²²² does not begin to encompass the full scope of *Gladue* factors and historical systemic issues that would be relevant to the case of every Aboriginal offender. The PBC's policy manual does not elaborate on a specific method of analysis, leaving interested parties without a valid methodology to properly analyze the offender's life story or how to apply a *Gladue* methodology to community release plans for Aboriginal offenders.²²³

The most pressing, and potentially disturbing, issue is whether *Gladue* social history factors are improperly interpreted and classified by CSC and PBC as a list of aggravating needs and/or risk factors that, once considered by CSC and PBC, might effectively negate any chance

²²² *PBC Policy Manual*, *supra* note 205.

²²³ The PBC policy manual's wording can be argued as being legally flawed because, as enunciated in *Ipeelee*, there does not need to be a link proven between an Aboriginal person's background and their present involvement in the criminal justice system.

for early release. As Mann pointed out in her report on Aboriginal corrections, “Aboriginal offenders are disproportionately assessed as high need and high risk on most criterion due, in large part, to a social history of disadvantage and discrimination.”²²⁴ A serious danger exists for both CSC and PBC members to improperly analyze the *Gladue* social history factors by applying the *Gladue* criteria against an Aboriginal offender, interpreting the social history factors as aggravating rather than mitigating circumstances,²²⁵ which potentially may lead to the improper categorization of an Aboriginal offender as a higher risk for release. *Gladue* consideration was meant to be mitigating in nature.

Based on the *Gladue* expert interview data included in Chapter 4, and the Cree *wahkotowin* kinship obligations found in Chapter 1, I would suggest that the *Gladue* social history topics need to be extensively re-worked to better identify historical and present-day laws, policies, and legislation²²⁶ that were imposed upon, and continue to be enforced against, Indigenous peoples in Canada, and the ensuing inter-generational trauma experienced by Aboriginal peoples. Accurate historical research, preferably through an Indigenous holistic worldview—in this case through *wahkotowin*—will need to be infused into the policies and procedures in order to better understand both the positive history and destructive effects of colonial history on nation, community, family, and the individual offender in order to find the most relevant Indigenous ways of justice and healing.

²²⁴ *Mann Report*, *supra* note 216 at 18.

²²⁵ Kelly Hannah-Moffat & Paula Maurutto, “Re-contextualizing Pre-sentence Reports, Risk and Race” (2010) 12:3 Punishment and Society 14 [Hannah-Moffat].

²²⁶ The residential school and child welfare systems, for example, were not just historical events that emotionally affected one person. These state-run destructive programs were official government policy that had a national reach across Canada to affect almost all Métis, First Nations, and Inuit nations, communities, families, and children.

Summary

By incorporating *Gladue* evidence into release and reintegration decisions for Aboriginal offenders, the release planning process must be more inclusive of the history of each offender's specific nation and community in order to honour the importance of community and family relationship to better substantiate and strengthen community recommendations when applying to the Parole Board. In honouring the highest intent of the *Gladue* decision through a *wahkotowin* lens of analysis, a comprehensive holistic healing plan would include an individual offender's release plans, while also including a thorough review of each Cree offender's life story and the systemic historical factors that have impacted upon their nation, community, and family.

If CSC and PBC agree that *Gladue* is applicable to the early release of Aboriginal offenders, three legal obligations would merge: 1) *Gladue*'s legal duty to consider the history of Aboriginal nations and communities, and to consider an Aboriginal-inspired community healing response; 2) Aboriginal conceptions of kinship relationships and obligations, such as *wahkotowin*, which include interconnected familial, community, and land reciprocal relationships and obligations; and 3) a more holistic implementation of Section 84 of the *CCRA*, one that respects the legal duty to apply a *Gladue* inquiry and a release policy that includes the holistic community planning and healing of Aboriginal offenders, families, and communities. A practical future vision would include the completion of a Gladue Report for each and every Aboriginal person who enters the CSC system, prior to intake. The Gladue Report could

subsequently be updated and regularly reviewed at all correctional junctures,²²⁷ from intake and programming decisions, and segregation and voluntary and involuntary transfer decisions, to the release and reintegration decision-making process. CSC and PBC must commit to better understanding, from an Indigenous perspective, the historical and systemic root causes behind over-incarceration.

From a *wahkotowin* perspective, the *Gladue* social history list of questions needs to transform from a mere basic outline of common Aboriginal experiences into a *Gladue* inquiry that espouses a more holistic and thorough telling of the life story and community history of a person, and honours Indigenous ways of interviewing, researching, and writing a Gladue Report. A *Gladue-through-wahkotowin* approach would suggest that the Aboriginal social history listing in Annex B of Commissioner's Directive 702 should be amended to include informal and legislated programs and policies historically imposed upon Indigenous nations, communities, and families in order to better understand the intergenerational historical trauma. The social history factors should include the duty to discuss, research, and document the negative colonial history, along with the positive historical events that have occurred within the personal and family life of an offender, and proud historical events that have taken place within their community and nation.

Potential questions arise when thinking about proper implementation of *Gladue*. Does the Gladue Caseworker need to be an Aboriginal person? If the interviewer is an Aboriginal person, does he or she know the accurate colonial history of Indigenous peoples living in Canada? Does this person have knowledge of the history of laws, policies, and legislation that were imposed on Indigenous peoples, including land disposessions, dispersals, and forced child removals, as well

²²⁷ McNab, *supra* note 150.

as the subsequent community and family destruction that took place? Does the Gladue Caseworker have an accurate understanding of the intergenerational effects and collective historical trauma experienced by Indigenous peoples?

The legal duty to collect *Gladue* social history evidence will remain irrelevant and inaccurate without a historical approach that recognizes: 1) the colonial history experienced by Indigenous nations across Canada, such as land removals and dislocations, residential schools, or foster care experiences; 2) the site-specific history of each territorial area, such as the forced relocations of specified Aboriginal communities; and 3) an acknowledgment of the positive history of a person's nation and community.²²⁸ In Chapter 4, I honour the legal duty to consider *Gladue* by including the *Gladue* legal experts' interview data. Themes emerged from the research data that explore relational and conversational interviewing based on Indigenous ways of being and relating, resulting in a more comprehensive and contextual *Gladue* reporting process that could potentially be applied to Section 84 of the *CCRA*.

²²⁸ Isobel Findlay, "Discourse, Difference and Confining Circumstances: The Case of *R v Gladue* and the 'Proper Interpretation and Application' of s 718.2(e) of the *Criminal Code*" (2001) 10:2 Griffith Law Review 225. Findlay argued that the SCC in *Gladue* misconstrued her circumstances, improperly "blaming the victim" by incorrectly connecting her suffering with Aboriginal heritage, instead of framing the issue through the colonial history imposed against Aboriginal peoples generally, and specifically the colonial history that has victimized and violated Aboriginal women.

CHAPTER 4

THE GLADUE REPORT EXPERTS

The purpose of this chapter is to review qualitative data attained from interviews with the experts working with Aboriginal Legal Services of Toronto [ALST] and the Gladue (Aboriginal Persons) Court in Toronto, Canada. Themes generated after transcribing the interviews point to a holistic vision of the legal duty to gather social history evidence and to analyze and operationalize that history, as set out by the Supreme Court in *R. v. Gladue*.

The Gladue Court

After the Supreme Court of Canada brought substance to Section 718.2(e), the criminal law community, including lawyers and judges, came together in 2001 in Toronto, Ontario to assess solutions to the newly proposed method of analysis for Aboriginal offenders before the Court:

Among the many available responses to these challenges, judges of the Ontario Court of Justice in Toronto chose one—a judge, supported by Courtworkers and Caseworkers who work for Aboriginal organizations that are separate from the court or government, in a courtroom for Aboriginal offenders only, and able to devote full attention to the proper application of s. 718.2(e) of the Criminal Code. The court, known as the Toronto Gladue (Aboriginal Persons) Court, was conceived in 2001 to enable judges to fulfill the Supreme Court of Canada’s directions.²²⁹

Judges in Toronto decided to begin from their own grassroots, without the instruction of government, to determine what infrastructure was needed to materialize in order to

²²⁹ Judge Brent Knazan, “Time for Justice: One Approach to *R. v. Gladue*” (2009), 54 *Criminal Law Quarterly* 431 at 431.

operationalize the Supreme Court's instructions to judges. The judges contemplated what systems would need to be in place to best analyze the cases by employing a different methodology, as *Gladue* instructs, that recognizes the unique social history of Aboriginal peoples.

In May 2010, I contacted the program director of ALST, Jonathan Rudin, who facilitated interviews with himself, two Gladue Caseworkers, Leslie King and Kika' Mowry, Crown Prosecutor Fred Bartley, and defence lawyer Dan Johnson. As each person was an expert in a specific area of the Gladue Court, every interview was unique and included different sets of questions,²³⁰ except in the case of the two Gladue Caseworkers, which employed the same set of interview questions. My questions for the Gladue Caseworker interviews focused on their experience with building relationships with clients, interviewing clients, and the writing process for a Gladue Report. The questions for the ALST Program Director focused on the infrastructure and procedures related to the Gladue Court and the Gladue Caseworker position, along with the specific supervisory role of his position. The questions for the defence counsel focused on the relationship with his clients, his interview process, and the line of questioning he generally used when obtaining *Gladue*-related information. Finally, my interview questions for the Crown prosecutor focused on the daily procedures of the Gladue Court, the importance of the Gladue Reports to the court, and common issues that he has witnessed in the everyday practice of considering alternative sanctions for Aboriginal offenders.

²³⁰ Please see Appendix B for a list of question themes that were asked in my interviews with the ALST Program Director, the Gladue Caseworkers, defence counsel, and the Crown prosecutor.

The bulk of the interviews took place from August 2010 to May 2011. Each interview, with the exception of the face-to-face pre-interview with Bartley, was audiotaped, and the interviews were subsequently transcribed for research evaluation. The themes included in this chapter were drawn from the five legal experts mentioned above. Eight Gladue Reports provided by the ALST Program Director supported the qualitative analysis of the expert interviews. All of these reports have been edited to ensure the confidentiality of clients, using either first names or initials.

Gladue Caseworkers

Aboriginal Legal Services of Toronto conceived of the idea to create a Gladue Caseworker position to fulfill the legal duties set out by *Gladue* to attain the social history evidence of an Aboriginal accused. The original intention behind the Gladue Caseworker position was to hire a person who could properly interview and gather the historical background information of each Aboriginal defendant. The Gladue Caseworker is tasked with interviewing individual Aboriginal defendants and exploring *Gladue*-required topics:

It is the role of the Gladue Caseworker to write Gladue reports regarding Aboriginal people who have plead guilty (or been found guilty) of criminal offences. Gladue reports—which average 12 to 18 pages in length—focus in-depth on the life circumstances of the Aboriginal offender. When necessary, the report links that life story to broader issues facing Aboriginal people such as the intergenerational trauma of residential schools, or the 60s scoop.²³¹

²³¹ Jonathan Rudin, “A Court of Our Own: More on the Gladue Courts” (2006) online: Nishnawbe-Aski Legal Services <nanlegal.on.ca/upload/documents/legal-articles/a-court-of-our-own---more-on-gladue-courts.pdf>.

The Gladue Caseworkers are hired to complete reports and have the ability to undertake historical research to honour the *Gladue* requirement to inquire into specific social history topics.

Professional Staff Experience

In interviews with ALST staff in Toronto, several themes were apparent in terms of necessary professional experience required for persons tasked with interviewing and reporting on the *Gladue* factors.

Aboriginal Identity and Aboriginal Lived Experience

One constant that has proven integral to the success of *Gladue*-information gathering is the hiring of qualified Aboriginal persons for the role of Gladue Caseworker. Gladue Caseworker Leslie King commented on the favorable effect that being Aboriginal has on the interview process:

I think as far as personal, I think one of the easiest things there to say for myself is that, already being Aboriginal and being obviously Aboriginal, like with the black hair and the dark skin and I look Aboriginal, I think that means that the client who is Aboriginal will feel a bit more comfortable speaking with another Aboriginal person.

I felt that myself. Like, places I go, I tend to gravitate toward Aboriginal people. I mean it's something that we can't dress people up to look Aboriginal so the clients will feel more comfortable with them, but that's just my initial point is that's a starting point for me is I'm slightly ahead in that sense in that I am already Aboriginal. So it provides some comfort for Aboriginal clients, I think.²³²

²³² Interview with Leslie King (10 August 2010) in Toronto, Ontario [King].

King expanded on the proposition that it is not only the fact that Caseworkers are Aboriginal, but also that they have some lived experience of some of the common systemic struggles experienced by large numbers of Aboriginal peoples:

And as well, as far as personal, I think what really helps me too is that I've lived the Aboriginal experience, if you want to call it that; quotation marks, the "Aboriginal experience." It's my Aboriginal experience and it's every other Aboriginal person's, their experience. But I think I've lived some of the experiences that are maybe common to Aboriginal people. Like, I've gone to residential school and so, if a client starts talking about residential schools, I can say, I've been there, I know what you're talking about. And if they want to hear my story, I'd be willing to tell them my story. So, I've been through that.²³³

As King confirmed, the reality that one has lived through many of the systemic horrors and historical discrimination against Indigenous nations and families can allow for a deeper understanding of colonialism and the systemic factors that have affected Aboriginal clients. He commented, "And so I have this theoretical grounding in what colonialism is, what internalized colonialism is, and to be able to recognize that in others; to have seen it in myself at one point and sometimes to still struggle with that, but being able to recognize it in clients."²³⁴

Rudin stated that a deep understanding is required and can be extremely helpful in one's role as a Gladue Caseworker, and that this understanding may not always need to be through direct lived experience.²³⁵ Despite this fact, it is a substantive point that a person's lived experience can bring skills to the interviewing table, such as increased empathy and understanding connected with living a life directly affected by the intergenerational effects of colonial laws, policies, and legislation imposed on Indigenous peoples.

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ Interview with Jonathan Rudin (12 April 2011) in Toronto, Ontario [Rudin].

University Education

Although a law degree may not be essential to complete a well-written, thoughtful, and contextual Gladue Report, each Gladue expert interviewed for this thesis holds a law degree, and possessed the professionalism, integrity, and deep understanding of the historical, legal, and systemic issues needed to understand the complexities of a Gladue Report. A law degree may allow a Gladue Caseworker a deeper understanding of colonial laws and policies that were legislated against Indigenous peoples, yet a background in Native Studies might have an equal or greater value than the law degree. Gladue Caseworker King, who holds both a Bachelor's degree in Native Studies and a Bachelor of Laws degree, stated that his university education and acquired theoretical anti-colonial knowledge are instrumental in his Gladue reporting work.²³⁶ Gladue Caseworker Kika' Mowry, who also holds a Bachelor of Laws degree and an undergraduate degree in Native Studies, stated that "I think I was hired based upon the fact that I have a law degree and my interest has always been in criminal law."²³⁷

Nevertheless, Rudin commented that a law degree is not a specified qualification for the Gladue Caseworker position, and it may not be the most important criterion for the position.²³⁸ Legal training does offer a specialized ability to research and write a good Gladue Report, but other university degrees, such as journalism, may also lend themselves to the required research and writing skills. Rudin also agreed that a background in Native Studies could be helpful training for the Gladue Caseworker position.

²³⁶ King, *supra* note 234.

²³⁷ Interview with Kika' Mowry (5 November 2010) in Hamilton, Ontario [Mowry].

²³⁸ Rudin, *supra* note 237.

Aboriginal Community Work Experience

Another important common quality of Gladue Caseworkers is their extensive community work experience with Aboriginal peoples, mainly in the area of corrections and criminal justice, both within the justice system and Aboriginal organizations, prior to working with the Gladue Court. As King commented:

As well, my former work experience, I used to work as a guard/counselor, informal counselor at a minimum-security correctional centre. ... [I]t was called a community resource centre. So it operated kind of like a half-way house, where we took in provincial offenders who were serving the last three or four months of their sentence. And we'd bring them back in the community and just set them up with counseling, take them to AA [Alcoholics Anonymous] meetings and sort of reintegrate them into the community. So I have that experience.²³⁹

Community work with Aboriginal peoples appears to allow Gladue Caseworkers a more thorough knowledge of community resources available to Aboriginal people. Their awareness of local Aboriginal programming options invariably allows Gladue Caseworkers to better support people in the healing and reintegration recommendations that are included in their Gladue Reports.

Indigenous Understandings of Relations and “The Good Life”

Although not an exhaustive list, the final theme that became evident throughout the Gladue Caseworker interviews was their ability to relate to each client not only as a human being with unique potential, but, more interestingly, as a person who is regarded as a respected relative, a relative who needs assistance to get back in balance in order to live a good life.²⁴⁰ Each Gladue

²³⁹ King, *supra* note 234.

²⁴⁰ *Ibid.*

Caseworker spoke in a way that was highly respectful of their clients, a way that honours an Indigenous worldview that each individual is inherently strong and has a life purpose, and a belief that, as relatives, Caseworkers have a responsibility to help a client attain a healthy life, *miyo pimitisiwin*.²⁴¹

Staff Supervision and Training

Gladue Caseworkers' training is on-the-job. They are required to read previous Gladue Reports and to write new Gladue Reports, while receiving feedback and editing suggestions from their supervisor. Rudin works with new Gladue Caseworkers as they master formatting the report and learn the best way to tell the story to the Court:

What we try and do is give people a week or two to read Gladue Reports because it's something unlike they've read. So if you've read a number of them, people will get a sense of this is what we're looking for. But primarily, the way to learn to write a Gladue Report is by writing Gladue Reports.²⁴²

Rudin elaborated on his teaching and editing role at ALST and how his written feedback is provided to Gladue Caseworkers in order to improve their skills and the essence of the Gladue Report:

My role, as supervisor, is I'll read the report and I will try and put myself in the mind of the judge and say, okay a question that arises as I read this, this is what I would like to know. So I will say to the writer, "We don't have to get an answer, but we have to at least ask these questions." And after awhile I know the writers get more comfortable asking questions in a nice way that the individual maybe didn't want to raise. ...

²⁴¹ *Miyo pimitisiwin* is a concept in the *Nehiyow*/Cree language that connotes living a balanced, good way of life. Anishnaabe peoples espouse a very similar belief in the good life or "*biimaadiziwin*." See Leslie King, "Gladue Reports: Reframing Lives" in David Newhouse et al, eds, *Well-Being in the Urban Aboriginal Community: Fostering Biimaadiziwin, a National Research Conference on Urban Aboriginal Peoples* (Toronto: Thompson Educational Publishing, 2012) at 225.

²⁴² Rudin, *supra* note 237.

So I get the report, I use the comment function on Word and the first time you write a Gladue Report I usually send 60 or 70 comments back and then people get better at it. I mean, just organizing the story is a real challenge, so there's a lot of, how do I write this story in a way that a reader can follow it and understand it. ...

I will review reports later on in the process, so a couple days before they're due. But when people start, I like to see the first draft of their report the week before it's due because I might be able to say, "You know, this is all very interesting but here are some questions that you haven't asked."²⁴³

The intent behind the supervisory position for the Gladue Caseworkers was consciously considered by ALST with an awareness that a need would exist for another experienced person to help with suggestions and editing, and with a broader perspective on the needs of the court:

[W]e always felt that this is too difficult a process—at least in our opinion—to do on your own. You need another set of eyes because you get so deep in it, it's hard to know—I mean, whenever I write something, I always give it to someone else to look at. I never write anything that's significant and send it out without other people looking at it. This is really difficult.

So there's a need for someone just to do simple things like, they're one of nine children, and I will actually count the list to make sure there are nine names. So there's a copyediting function that's important because if you don't get the facts right, it diminishes the report.

There's the "let's try and tell the story, let's reedit the story" function. I mean, I encourage people to put more in, put everything in and we'll take it out if we need to later. And then there's the specific function that I think I play, which is, "Okay, I'm the judge, what am I looking for? What's the answer here? What's the answer there? Or this recommendation is never going to work for this reason"—so all those sorts of issues. I don't think—we don't think—that people can do this without adequate supervision. And I've certainly seen people try and do this without supervision and generally it doesn't work well. So I think it's crucial.²⁴⁴

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

King also confirmed that Rudin's edits are extremely helpful as a learning tool, as the comments improve the Caseworker's skills in writing a clear and informative Gladue Report.²⁴⁵

Infrastructure

The infrastructure necessary to implement the Gladue Report-writing process is an important consideration. According to Rudin, increased benefits appear to be associated with an independent Aboriginal agency providing *Gladue* interviewing and reporting.²⁴⁶ An outside agency can provide more detailed information that is in sync with the deeper intent of the *Gladue* decision and can provide informed guidance on the proper Gladue Report structure. An outside agency is also equipped with professional expertise relating to *Gladue* social history information. Finally, an outside agency can provide an arms-length service to the courts and corrections, such as the research and writing of Gladue Reports that will not be biased by other correctional reports, while also providing an unbiased Indigenous approach when interviewing and advocating for an offender.²⁴⁷

Gladue Report Writing as a Process

The Gladue Report-writing endeavour is often viewed by ALST staff as encompassing a "process," from the interview stage to the writing of the report. This "process" involves the intricacies of meeting with a client in order to garner all the life story information for a Gladue

²⁴⁵ King, *supra* note 234.

²⁴⁶ Rudin, *supra* note 237.

²⁴⁷ Interview with Jonathan Rudin (12 April 2011) Toronto, Ontario [Rudin II].

Report. The process also includes phone calls to family and community members in order to obtain further information about the client's past, present, and future life issues.

The final step in the process is the writing of the Gladue Report, including both the interview information and the research about the historic systemic and discriminatory legal impositions upon Indigenous nations and communities within Canada and the subsequent intergenerational familial effects. In the *Gladue* process, the client also goes through a process of thinking in a new way about his or her life circumstances, reflecting and reviewing what areas have been going wrong in his or her life, and what positive healing options may exist. Rudin explained:

And the other part of the Gladue Report is that it is a process; it is a process sometimes for the client and their own sense of discovery to some extent. So we'll leave them with some difficult questions and they'll come back in a few days, think about why treatment never worked, so to think about those things.

That's why I think of the Gladue Report, we use the term Gladue Report writing process, and it's a process not just for us, it's a process for the client as well. It's one of the things among the many that distinguishes a Gladue Report from a PSR. But we try and engage the client in thinking about their life in ways that they may not have thought about their life before.²⁴⁸

A *Gladue* interview and the writing of a Gladue Report is a fluid process that brings home the importance of allowing a person time to think about which healing option might work best, which has the highest viability, and which generates the highest level of personal commitment.

²⁴⁸ Rudin, *supra* note 237.

Templates and *Gladue* Factors

The Gladue Caseworkers at ALST have compiled a number of social history templates that document well-researched historical vignettes of the specific events impacting Aboriginal peoples. Reputable research sources²⁴⁹ are used in a Gladue Report to footnote common historical and systemic factors experienced by Aboriginal peoples, such as residential schools, child welfare system, adoption, and community dislocation, among others. Rudin stated that ALST uses reputable research publications to document both the common systemic experiences of Aboriginal peoples, while also gathering site-specific historical events that were imposed more strategically on certain Indigenous nations or communities:

The social history, thus broader issues, is sort of an overlay to the [Gladue] Report and we've approached this a couple of ways now. If a parent has been to residential school, or a grandparent, and we actually have a four- or five-page section on residential schools, a template if you will, that we will normally just put into the report. And then we go back to telling the story and then it becomes apparent the extent to which the template fits and we're adding to those. But the purpose of those templates is to provide that broader context.²⁵⁰

The historical research templates appear to improve the relevance of a Gladue Report, although a danger could exist to over-essentialize the experience of one Indigenous person. More specific historical research is required when historical and legal circumstances have had a detrimental effect on a specific community, territory, or nation:

[A Gladue Caseworker] wrote a report for a guy who is an Inuk and he talked about, because you have to, the forced relocation. So he did research on that and wrote about forced relocation. So he would go to RCAP or other sources to find that. So yes, as

²⁴⁹ As Rudin mentioned, reputable documents are preferred, such as peer-reviewed articles, royal commissions, and commission reports on criminal justice, such as the Royal Commission on Aboriginal Peoples. Furthermore, Indigenous scholars who have authored articles detailing the colonial history of Indigenous nations living in Canada, and the subsequent intergenerational historic trauma, would also be very useful to the courts.

²⁵⁰ Rudin, *supra* note 237.

we're doing this sometimes you're writing specific histories about specific communities. And we try, if we're doing that, to rely on "reputable recognized sources". Sometimes we can find people from those communities who will talk to us. But in some ways that's "the overlay."

The same thing with child sexual abuse, if the person was sexually abused when they were a child, we have some material on the impact of child sexual abuse. That gets put in after the fact. The client's not going to say, "You know why I do ... cutting." Some of this is not Aboriginal-specific, so we have a lot of clients who engage in cutting.²⁵¹ Well, I can't assume that the judge knows what cutting is about and the difference between cutting and suicidal ideation, so we'll put information in about that.

So we sort of have an ever-expanding list of, as we do the work we think, oh here's something to think about. Some of it is Aboriginal-specific; some of it is not as Aboriginal-specific.²⁵²

Gladue Caseworkers have also conducted research for templates on residential schools and outside adoptions, documenting the historical context and the intergenerational traumatic effects upon a person. King outlined the effects that an adopted upbringing will often have on an Aboriginal person's identity and its potential connection to future criminal behaviour:

Adoption, fostering, specifically if they've been adopted into a non-aboriginal family. And I actually researched that at one time; I had a little bit of time before one Gladue Report was due. And so I researched that and I wrote a two-page insert I will put into some of our reports now that talks about some of the circumstances of being Aboriginal and being adopted into a non-Aboriginal family and some of the challenges that the literature has identified.

And so that was interesting, researching that and some of the problems there of identity, connection, to how many of them are actually in trouble now. I think Correctional Services Canada had a statistic that 63% of their Aboriginal clients were identified as having been fostered or growing up in a group home, or not in their own family.²⁵³

²⁵¹ See generally, Lori G. Plante, *Bleeding to Ease the Pain: Cutting, Self-Injury, and the Adolescent Search for Self* (Westport, CT: Praegar, 2007). Cutting is a form of self-injury, but is not always considered as suicide ideation or an attempt. Rather, cutting, including burning or scratching the surface of the skin, is often applied as an unhealthy way to cope with emotional pain. The behaviour may be associated with depression and may temporarily cause a sense of calm, but soon after may cause feelings of guilt, remorse, and/or anger.

²⁵² Rudin, *supra* note 237.

²⁵³ King, *supra* note 234.

ALST staff members suggested that the social history templates or inserts are an essential part of the Gladue Report that instructs the judiciary of the intergenerational traumatic effects resulting from the legislated removal of children from their families and communities.

Intention of the Gladue Reports

Gladue Reports need to be viewed as unique and valuable historical evidence that is provided to criminal justice officials to contribute to a more contextual and holistic assessment of an individual compared to other deficit-based reports. In a compelling article written by two respected University of Toronto professors, Gladue Reports were viewed in a favourable light when contrasted with Pre-Sentence Reports [PSRs] written for the court. Hannah-Moffat and Maurutto commended the contextualized approach of the Gladue Report:

A Gladue report and its recommendations are holistic and contextualized accounts that characterize the Aboriginal offender's needs, risk and community options differently from the actuarial risk-based character of PSRs. Essentially, they adopt a non-actuarial model and more contextualized approach to situate and frame Aboriginal offenders' risk.²⁵⁴

Rudin confirmed the authors' contention that Gladue Reports provide thorough information to decision-makers regarding the client: "Gladue Reports give decision-makers information on which to make a decision. PSRs and risk assessments tell people what their decision should be."²⁵⁵

²⁵⁴ Hannah-Moffat, *supra* note 227 at 4.

²⁵⁵ Rudin, *supra* note 237.

The Gladue Report is intended as an informational document to serve as judicial notice for the judge to properly consider the social history of an Aboriginal accused person. In various interviews, staff and defence counsel spoke of the goal of the report to inform and educate the judiciary and legal personnel who are working within the criminal system:

The goals are to inform the judge, I guess first of all the judge. I mean, it's also to inform the Crown attorney, the guy's own lawyer, the justice system in general, although I don't think the whole justice system would be reading each of these Gladue Reports. So the goal of the Gladue Report would just be to tell that client's story and to tell it from his Aboriginal perspective. And I think one of the goals is just education in general.²⁵⁶

Kika' agreed that the goal is to inform and educate the judge.²⁵⁷ She stated that the goal is to educate all parties about the deeper meaning of the *Gladue* decision by outlining the importance of building positive relationships with all of the criminal justice staff in this education process:

[W]hat Gladue writers [Caseworkers] can do to promote *Gladue* is to build those relationships with the judges and the lawyers and the JPs and the Crown prosecutors, the chief and council, the probation officers, correction officers. That's a really key point in reaching the individuals, the accused, and to encourage all of the above to step up to the plate and recognize that ... there are distinct factors. That it's not just a get out of jail free ticket. It's really just the freedom to be treated as fairly as possible, even with our toxic human nature.²⁵⁸

King agreed that education is important for lawyers and judges to better understand the unique history of Aboriginal peoples:

It's also educational to the lawyer and the Crown who are very much concerned with issues of law of a very narrow category [thinking] it doesn't matter if you're Aboriginal or non-Aboriginal; this is still the same punishment for the same crime. And so it's kind of like, if they read the report well and give it due consideration, that they would

²⁵⁶ *Ibid.*

²⁵⁷ Mowry, *supra* note 239.

²⁵⁸ *Ibid.*

hopefully become a bit more educated from it as well. And so that's kind of what I mean [that] it [is] hopefully an educational tool at the end.²⁵⁹

The importance of the Gladue Report's role in educating the judiciary about colonial policies and the intergenerational effects of residential schools and the child welfare system was pointed out by several experts, including King, who stated:

I think one of the things too, in telling stories of clients, I think one other thing is that it gets mentioned, but I'm not sure if it's always given that much consideration, is that whole aspect of the intergenerational effects where, even though the client him or herself, might not have gone to residential school, he or she was raised by parents who went to residential school, or even grandparents who went to residential school, aunts and uncles. And so they've missed out, or they struggle with parenting and they struggle with other things that come from being separated from one's family, one's culture.²⁶⁰

The interview with defence counsel Dan Johnson revealed *Gladue*'s bigger goal of gathering the contextual data on behalf of clients. The goal of compiling *Gladue* factors, in Johnson's view, is to offer a plan of optimism to the judge about the client's life and chances of success.²⁶¹

King also stated that the Gladue Report interview(s) with the client seems to hold a less intended, yet positive effect of educating the client about the history of colonial law:

Educating anyone who comes in contact with that report in the sense that, like when I talk about internalized colonialism, sometimes a client doesn't see that, or when we talk about racism and he or she says I didn't experience racism. But if you ask them specific questions about, "In school, were you called names?" and exactly like what you're talking about, employment, housing, how were you treated then? In a way it's kind of teaching them about how colonialism is affecting them, because they don't exactly have that theoretical knowledge. If you say colonialism, they're like, "What?" But if you give them examples, it kind of opens their eyes a little bit about their experience in a bigger sense. So it kind of teaches them about themselves, hopefully.²⁶²

²⁵⁹ King, *supra* note 234.

²⁶⁰ *Ibid.*

²⁶¹ Interview with Dan Johnson (14 January 2011) in Toronto, Ontario [Johnson].

²⁶² King, *supra* note 234.

Educating a person on colonialism and racism may initially appear that a Caseworker is suggesting or driving an outcome. However, through the interviews, I understood this education process within a *Gladue* interview appears integral to an Indigenous person's understanding of the systemic history connected with their extended family and community and the intergenerational effects that may be affecting his or her present behaviour. If a person has never been educated in the language of colonization and oppression, they cannot name their experience. By offering example questions about racism, such as those posed by King, it appears to allow the client to think about their experience through a wider lens that acknowledges both systemic discrimination and day-to-day experiences of racism, oppression, and brutal human treatment.

Gladue Reports and Trust Building

One of the key factors in building rapport and in discussing deeply traumatic issues is ensuring that a level of trust and emotional involvement has been established. As Kika' explained:

[T]he emotional involvement that's necessary to develop a trust relationship with the accused is very trying. It's ... that evidence that a person is fully engaged in listening and showing compassion and empathy...that's necessary for a person to fully feel that the person's engaged in the story experience. ... So the ability to continue to weave the story, the history of this individual, is imperative. And the only way that can be done is to have, kind of, a plan of action but, with that plan of action, be able to comfortably, and looking at the individual and looking and showing sincerity, that they're going to begin to trust that, yes, they will start to describe who [is] their family.²⁶³

²⁶³ Mowry, *supra* note 239.

Kika' expanded on the trust-building theme, stating that she believes her Aboriginal background helps her to better understand some of the life, family, and common historical circumstances of each Indigenous client.²⁶⁴

Both Caseworkers commented on the client being reluctant to share personal and family information until they could ascertain who would be reading the report. King explained how he helps a client feel more at ease with sharing sensitive family information:

One of the big questions that always comes up is they tend to ask, "Is this going to be read out in court?" So what I'll tell them is that portions of it might be, but generally it's not going to be read out in court and not very many people are going to see it. And I think when a lot of them find that out, they become a bit more open and they're not quite so reluctant, especially if they're talking about family, because they talk about their mom. They seem very much like, "Oh, I don't want to talk about my mom or my dad or my family"...they don't want people to think badly of their family, of their mom, of their dad, of their sister, brother, aunts, uncles. And so when we tell them that, no, not too many people are going to see this report, then I think they're a little more comfortable with that.²⁶⁵

Kika' confirmed that clients generally ask about who will be reading their personal details.²⁶⁶

Once the Caseworker provides this information, it appears that the client feels more comfortable in sharing personal information about their family members. She continued on the trust-building theme, sharing a unique interview rapport-building approach that appears to help build the trust necessary for more in-depth sharing of personal information:

[M]y very first question I always ask is:
"What is your very first memory? How old were you?"

[A client might hypothetically respond:] "What do you mean my first memory? I don't know."

²⁶⁴ *Ibid.*

²⁶⁵ King, *supra* note 234.

²⁶⁶ Mowry, *supra* note 239.

“What’s the first thing that you can remember? If you go as far back as you can, what’s your first memory?”

And usually it’s a memory that is a good memory. And I know, for me, that was always something that my grandfather and my elders would say, “So what’s your first memory? What are you thinking about? Where do you grow from? From what rock did you come out from under?” Joking, and honestly, I use that same kind of lightness to get them to begin to open up their mind, their hearts ... their spirit. And they’ll tell me, “This is what I think it is.” I’ll just say:

“Well, what do you mean you remember being in a boat? What kind of a boat? Did it have a motor on it? Did it have paddles? You said water, but is it a river or was it a lake?”

And I get them to relax with that memory. And once they’ve got to that point...and I’m not kidding you, I do this for every single report I’ve ever done. ... And once that happens, then all of a sudden they’ve shared something ... the willingness, the ability to share something to let down that little barrier ... and they see that I accept it and that I’m interested. Then it begins. Then the floodgates come down, and it really truly does.²⁶⁷

Kika’ pointed out that sharing some of her own story is important when building a relationship with the client:

So what I’m saying is that, as writers, being willing to share one’s personal experiences because it would be very, very helpful for the client to feel like I would understand and I’m not judging them—very, very helpful to do that. So I guess that’s a little bit ... even beyond rapport building, it’s building a relationship.²⁶⁸

The intention to build more than a rapport, but rather to nurture a “relationship” with the client, is important in allowing the client to feel comfortable.

Dan Johnson also spoke of the trust needed when speaking with clients who have been traumatized by sexual abuse, especially when dealing with male survivors of abuse:

You know, you’re dealing with people frequently who’ve been traumatized, have learned not to trust, who have not been treated well and you’re another person and you’re trying to communicate, you’re trying to let them relax into and have some comfort with the

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

notion that you are a safe person for them to talk to. And that if they tell you stuff, then you can discuss with them how that might help them. But that doesn't happen in ... you know, rapport and comfort don't happen in five seconds, especially when you're talking about abuse. And in terms of abuse, I think men have particular difficulty talking about having been sexually abused as children, because it's so tremendously shameful.²⁶⁹

This highlights the value of being more compassionate during the often-intense interview topics, while also patiently building a relationship with the client.

***Gladue* Interview Process: Conversational, Relational Flow**

Although not a stated intent of a Gladue Report, it appears that an important piece of the *Gladue* interview “process” involves the conversational and relational flow of the discussions that the interviewer has with the client, and with his or her family and community members. This conversational style is akin to conversing with a person as if he she were a close relative, a style that may be in stark contrast to the potential staleness of probation officials merely asking closed questions from a *Gladue* questionnaire list. As confirmed by Kika’, the *Gladue* reporting process is unique in that the Caseworkers choose a conversational approach by engaging with the client, helping them understand the nature of the questions and avoiding the chance that it becomes a closed “question-directed”²⁷⁰ interview process.

The theme of conversational flow continued to be prominent as Kika’ emphasized the need for the conversation to have a relaxed rhythm in order to gather personal life stories and the deeper intergenerational effects:

²⁶⁹ Johnson, *supra* note 263.

²⁷⁰ Mowry, *supra* note 239.

And that's how the discussion is ... it's got to flow ... there's so many thoughts going on in a person's mind that they don't think is relative to what we're gathering which is their history and their relationships and their families and the education of their families.²⁷¹

In some ways, this conversational flow is less similar to western conceptions of the term “conversation,” but might be more connected with Indigenous conceptions of “visiting,” whereby certain relatives hold reciprocal responsibilities and obligations to visit and care for each other.²⁷²

Through the conversational flow, clients tell their life stories, often with various systemic factors emerging, and provide the necessary judicial notice of the social history of Aboriginal peoples. Kika' provided specific examples of systemic factors and their deep relevance:

So at the end of the story ... you will begin to see that there was issues of low education ... lack of education, that's a systemic factor. Why, why, why, why? Those things will be noted. Issues of substance abuse—that will have been raised. Mom and dad drank, mom and dad fought, I saw that. Dad left, so it's a broken family situation or mom ran away. Mom's a drug addict. Dad left, broken family, drug abuse issues, systemic factors once again. Mom went to residential school, another systemic factor. Dad wasn't a Native person, didn't understand my mom. Mom never held me, didn't touch me, she went to residential school. Again ... so then again, footnotes like crazy. We're educating the judges, telling them what we've learned and what are the statistics and ... we're giving them lots of information for them to take judicial notice of as we move along.²⁷³

Rudin illustrated an example of the “*Gladue*-writing process” when explaining that, sometimes years later, clients who are re-interviewed will be able to share more personal information.²⁷⁴

While acknowledging that the client is sometimes not ready to talk, Kika' emphasized the ability

²⁷¹ *Ibid.*

²⁷² Many cultures likely have similar responsibilities and obligations towards their relatives, and enjoy visiting and catching up with their relatives. In this case, I am speaking about specific Aboriginal conceptions—Cree and Métis conceptions—of visiting and caring for our relations and our reciprocal obligations to treat each relative in a unique and respectful way.

²⁷³ Mowry, *supra* note 239.

²⁷⁴ Rudin, *supra* note 237.

of a Caseworker to keep the conversation flowing and to ask natural questions that confirm the client's story:

And it's like a floodgate. They start telling me these things and [I'm] constantly having [to be] very careful to say, "Okay, wait now. So you said that ... it says on here, I wrote it down, that what you said was that ... so you didn't get any sleep that night or that night and that's why you quit school."²⁷⁵

Kika' pointed out that throughout the Gladue Report-writing process, the conversation with the individual client might appear circular, covering topics that may not seem pertinent. Yet the importance of this conversational style allows the client to feel comfortable and relaxed in sharing their story. The Caseworkers follow this relaxed and spontaneous "Indigenous" conversational style while continuing to be cognizant of returning to the original intent, noting that "to know that from a First Nations perspective, it is a lot of talking in circles, but it's always to remember: what is the original thing that we were trying to gather to assist the court."²⁷⁶

Kika' also emphasized that *Gladue* interviews may take more than two hours in order to fully discuss the generational family history and *Gladue* life factors with the client. It could therefore be at least two hours into the interview process when a Caseworker finally talks about the present offence with the client:

So when it comes up now to his present offence, now they're on a roll, very comfortable, they've got that off their shoulders, talking to me and going, "Okay, tell me now ... what's happening now? What happened ... why are you here anyways?" Well, they're very, very comfortable by this time and we're talking a two-hour interview. And they'll start telling me their story: "This is what happened."²⁷⁷

²⁷⁵ Mowry, *supra* note 239.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

Also essential is the use of open-ended conversational questions to support the comfortable conversational flow. Kika' pointed out that it is better to avoid using invasive, leading questions, and to instead use questions that have a neutral, curious tone. For example, consider Kika's example of questioning a client about family members attending residential schools:

So in my discussion with this person, for example:

"So your mom is at Red Lake?"

"Yeah."

"Well, do you know if she went to high school or went to elementary school?"

"Probably."

"Oh, did you ever see her writing down anything?"

"Yeah, she used to write letters and sometimes she would help me with my homework."

"Really? Wow. So did she ever say where she went to school?"

"No way, she would never talk about where she went to school because she said it was a bad place."

"Oh, I see. Did she ... what did she call this school?"

So what I'm doing is I'm not giving them an answer, I'm really just trying to...I'm fishing. I'm on a fishing trip with them. Pretty soon they'll say, "Yeah, she said she went to the residential school and it wasn't very nice."

"Oh, I see. So then what was your relationship like with your mom?"

"Pretty good until sometimes they would be drinking."

"Oh, who are they?"

"Well, my dad and my mom."

"Okay, so was it ... what was that like? And how old were you when you first saw that?"

So again, I'm not trying to probe so that it's invasive, it's more sharing the story and they're still in their childhood.²⁷⁸

Caseworkers are also intent on quoting the client's words verbatim if possible to honour and fully capture the life story of the client. In that light, Kika' stated that long quotes of the client's words are often included in the Gladue Reports:

And I quote, I am writing like crazy and the reports that I write, I bet you my supervisor will tell you that probably 75% of everything that's on that report are their own words. I'm quoting like crazy because it's time to let them speak their own voice. ... [S]o about 75% maybe 70% are their words completely.²⁷⁹

When reviewing Aboriginal restorative community options with the client during the *Gladue* interview process, a back-and-forth conversation occurs with the client that promotes client input into solutions for their own life. The client is not forced to attend a program, but instead is offered healing options in the Aboriginal community that may be helpful. The client is given information about the options and also is given significant time to consider whether those options could be useful for their future growth and wellness. As Rudin stated:

[I]f you ask someone, "What do you want to do," you can only reflect back on what you think you can do. And, "What programs do you want?" You can only reflect back on what programs you think exist. So when we're able to say to someone, "You know, there's a program at the ... healing lodge for people who were sexually abused and who are now perpetrators. Would you be interested in going; for people who have been charged with sexual assault?"

And they go, after a while, "Yes, you know, I would."

Now they're not going to say, "You know what I need? I need a program ..." Why would they even—is there such a thing? Who knows that such a thing exists? So you can open those discussions up ... when you engage them in a process, like the *Gladue* process,

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

they often come out of it going, “You know, I hadn’t thought of it, but maybe I do need X. Maybe I realize now, maybe these things do have a relation.”²⁸⁰

The above passage demonstrates the importance of presenting community options to the client through a natural, conversational, non-invasive style that allows a person to think about all the options for their community-healing plan.

***Gladue* Interview Process: Life Story**

As I will suggest in Chapter 5, the process of gathering the life story of an Aboriginal person, while considering the stories and specific histories of each person’s nation, community, and family, is at the heart of *wahkotowin*. According to Rudin, the essence of the *Gladue* process is the interviewing and documenting of a person’s life story and their family’s history:

We started by writing the social histories, so we went into this without a lot of assumptions about what things would look like. So our sense was what we needed to do was tell the stories. ... So we didn’t set out, and we don’t set out, to provide answers to particular questions in terms of the person’s social history. ... I mean, I don’t think you really can get at these issues in that way. The way you get at this is by letting people tell their story and listening to that story, and then coming back to issues as they arise. ...

And sometimes you can only get at things by talking to the person and then talking to other people and then going back to the person and saying, “You know, we spoke to your sister and she said this,” and then that moves things along. So you can’t approach it as though there’s a way. ...

In some ways, when you think about the social history and when we do it in terms of *Gladue*, we’re writing for a particular audience and that audience has their own set of questions in mind, and we have to be aware of that. So this isn’t a biography where, if I’m telling my story, I’ll tell my story the way I want to tell it and I’ll tell you what I want to tell you about my story. We’re doing this for a particular purpose.²⁸¹

²⁸⁰ Rudin, *supra* note 237.

²⁸¹ *Ibid.*

Rudin continued by commenting on the essence or truth of a person's story. He shared that in the process of conversing and documenting a person's life story, and gathering information from family and community interviews, it becomes clear that no single truth explains the life of a person:

[A]s we're telling the story, we're not concerned about finding what might be called the truth. The story is everyone's perspective on things. There's not one perspective. Our purpose in writing a report is not to say, "This happened," because we're not there, we don't know if this happened.

We're doing a report now for someone who alleged that he was sexually abused when he was 11 or 12 and the reaction of his parents were that they sent him away. We don't know if he was sexually abused. We'll never know if he was sexually abused, but we know what he said and we know what the family's reaction was.

So we'll write reports where one parent says one thing and another parent says something else. We never resolve the contradiction because we can't resolve the contradiction. And simply the fact that there is a contradiction is often, in and of itself, revealing. So we're not seeking truth as though there is a version of the story that is right and a version of the story that is wrong. I mean, sometimes someone will say this happened and someone else will say that's bullshit, that didn't happen, well we'll quote both people but, again, we can't say what version is correct.²⁸²

As Rudin clarified, when gathering the *Gladue* data, many voices provide a fuller "truth" to a person's life story. Although the history of a nation and community may be intact within books, articles, or other respected sources, we must honour and record the sometimes-conflicting information that is provided by the person and each of their family members.

²⁸² *Ibid.*

Social Historical Context and Systemic Factors

The duty of the Gladue Caseworker, in the Program Director's view, is to put a life story into an intergenerational, socio-cultural, historical context:

[W]e don't expect the client to be able to put their life in a socio-cultural, historical context. ... When you ask someone what their childhood was like, they're reflecting on what they see around them. So if what they saw around them was that people were getting beaten all the time, that's what they saw around them. ... What we need to do for our report is to go beyond the individual story as much as possible, flesh it out from other people to get a better sense of what happened and then put the context on top of all that.²⁸³

Gladue Caseworker King explained the need for criminal justice staff to widen their knowledge of the history of Aboriginal peoples and to be aware of the differences between the life of an urban Aboriginal person versus that of a person from a small, isolated reserve community:

So the judge is supposed to take judicial notice of the unique systemic and unique circumstances of the Aboriginal people. Although, I think what the decision [*Gladue*] has also done is, in identifying certain things like residential schools, it lays out about three or four different things. And I think that's all that the judge thinks about as ... the Aboriginal experience; if he went to residential school that qualifies, if there was poverty in your life you qualify as an Aboriginal person, and if three or four other things happen in your life.

But, I can also have the experience where sometimes a judge will say, "Well you know, I was a judge [in the North] for many years," and so he's thinking about the client in Toronto based on a client up North ... and some of the circumstances that happened in a socially isolated reserve, as opposed to in Toronto.

And so it becomes a stereotype. These things, residential schools, poverty, some of the things that can happen when you're in poverty, like drinking, B & E's [break and enter charges], property offences, those become stereotypes that a judge, maybe not purposely, relies on. And if a client doesn't meet those, they're somehow not deserving of *Gladue* considerations because they haven't met these stereotypical characteristics of what an Aboriginal person should be.

²⁸³ *Ibid.*

So it's educational in the sense that something like suicide rates in Aboriginal communities, that's not mentioned in the *Gladue* decision but it's an aspect of being Aboriginal that, often times, judges don't realize the extent it happens on reserves. And so I think that's something that they might not right away consider as, oh, that's a part of the Aboriginal experience too. And so it's educational to the judge in that sense.²⁸⁴

As mentioned previously, King's point was to obtain very specific information about a person's life experience and the history of their specific nation and community in order to avoid essentializing or over-generalizing the unique experience of each specific Indigenous community. The intent of the *Gladue* decision remains to gather social history evidence from the Aboriginal person and their families as a way to educate justice officials, while also not limiting a person's life situation to a specific stereotypical list of expected Aboriginal life circumstances.

***Gladue* Factors: Systemic Racism/Oppression, Systemic Poverty**

Systemic racism is another issue cited in *Gladue* that forms a prominent theme explored within the *Gladue* interviews. What became clear after interviewing Gladue Caseworkers is that the topics of racism and oppression were discussed with clients through a conversational, open-ended questioning style. Caseworkers avoided talking about the topic of racism in a direct closed-question style, such as, "Did you experience racism?" King, instead, remarked that Caseworkers speak about the issue using a conversational style, sometimes applying a scenario-specific approach to the topic racism:

Often times I'll ask them first about school, like "What school did you go to?" And if they went to a school that was off the reserve and they were in a public school, then I'd say, "Did you ever get called names?" "How was it getting on the bus ride home, if you had to take a bus, how was that experience?" It was mostly that. And if you've ever been

²⁸⁴ King, *supra* note 234.

walking along the street and a group of people drove by and called you a name, or threw things at you even, that's racism. And so those kinds of experiences I've asked about.²⁸⁵

Kika' takes a similar approach to King's method, asking scenario-type questions as a way to provide the client with potential examples of racism:

And so I'm looking at their childhood. I'm looking at, "What was it like going to school for you? What was it like with your relationships at school? Did you have any friends? What were your teachers like?" And that's when we begin to explore issues of racism, of things that might have happened to them that they weren't allowed to be involved in, things that they were successful at, things that they failed at. A lot of these folks talk about issues they had because they were wetting the bed because they were dealing with substance abuse or sexual assault. And the people they feared were anybody in authority. So now it starts ... you can start to see what it's weaving together is this person's angry, very angry, doesn't trust anybody especially a cop or a lawyer or a judge. Doesn't believe anything they have to say. So how are they going to be rehabilitated at the end?²⁸⁶

King sets out systemic poverty²⁸⁷ as another *Gladue* factor that supports a scenario-example or exploratory questioning approach, as opposed to the less-successful closed-question approach that asks whether an individual has experienced poverty:

Again, poverty, "Did you grow up poor? How would you describe growing up poor?" I often ask them, "Did you have a vehicle growing up?" And that's been kind of my measure of poverty. It's probably not the best measure, but it's something I ask. And I ask them, "Did you have days when you were hungry, when you didn't get fed? Clothes, did you have clean clothes?" Stuff like that. And that helps to give me a better idea of how much poverty was present. Education, how far they went, how it was ... in the classroom, on the bus. Employment, how it's been, if they had to go off the reserve to get employment, which they have to a lot of the time, how that's been.²⁸⁸

²⁸⁵ *Ibid.*

²⁸⁶ Mowry, *supra* note 239.

²⁸⁷ See generally Angela Sterritt, *Racialization of Poverty: Indigenous Women, the Indian Act and Systemic Oppression, Reasons for Resistance* (Vancouver, BC: Status of Women's Racialization of Poverty Project, 2007) at 4.

²⁸⁸ King, *supra* note 234.

Gladue Caseworkers support a conversational style that avoids direct questions, asking point-blank whether a person has experienced poverty or racism, and instead seek to discuss specific life experiences that suggest racism or poverty. This conversational style allows the Gladue Caseworker to cover the key *Gladue* systemic issues while honouring a relational interview style that promotes visiting with and honouring a client.

Criminal Justice Systemic Factors

The effects of an unjust criminal justice system are important considerations when asking an Aboriginal accused about their life experiences. Criminal justice systemic factors may include a person's experience and involvement with police, lawyers, jails, or any justice official. Kika' shared the experience of interviewing a client and asking about the details of past offences and the present offence. The circumstances are reviewed relating to the client's criminal behaviour, their charge, their relationship with their lawyer, and their decision to plead guilty:

And finally it comes to the point of the crimes. I don't jump into what is, "Let's talk about the crime that you experienced today." I say, "Well, all these times that you've been in trouble before and I've got your record here, it seems like ... who is ... what did you get to say during those times?"

"Nothing."

"Well, what was your lawyer like?"

And I get them to talk about their relationship with their lawyers before. So all of a sudden they're looking at ... the judge is looking at the systemic factor of the lawyers who are supposed to be representing them, don't even know them. And they're representing them and speaking for them and I indicate whether they're on legal aid or whether they're not on legal aid. I say, "Why is it that you plead guilty this time?"

"Well, because ..."

And I'll put it out there. Lawyers are doing this all the time. It's a business and it's wrong and when the person is saying, "I shouldn't even be pleading guilty to this," ... "I should not have plead guilty but I've been in here for so long and it would have taken me a long time to get out of there and I don't want to sit in jail all this time until when we get a trial date." ...

Even though, when he explains the situation, he has such an extreme defence that it's ridiculous. And his lawyer lets him do it. The judges, people are not working together to look for what I sometimes wonder is justice. And I think that's what the client is trying to say. So those are the other systemic factors; the justice system itself is a systemic factor, a negative systemic factor.²⁸⁹

King also explored justice system factors when he spoke about questioning clients about their experiences with police:

Even on past offences, some of the circumstances of that. For instance, do they feel they've been targeted by the police, just because you're Aboriginal, just because you're Ojibwa or Cree or something, have you experienced that the cops stop you just from you walking down the street, and how was that relationship? And that's part of it.²⁹⁰

The importance of discrimination and abuse from police and justice officials cannot be underestimated when speaking with Indigenous clients. Caseworkers must establish and maintain the trust required for people to discuss systemic abuses of power, coercion, and violence.

Fetal Alcohol Spectrum Disorder

Due to the relevance of Fetal Alcohol Spectrum Disorder [FASD] in Canadian criminal law,²⁹¹ and its relation to intergenerational trauma, FASD is another social history factor that has

²⁸⁹ Mowry, *supra* note 239.

²⁹⁰ King, *supra* note 234.

²⁹¹ Kent Roach and Andrea Bailey, "The Relevance of Fetal Alcohol Spectrum Disorder in Canadian Criminal Law from Investigation to Sentencing" (2009) 42:1 UBC Law Review. The authors reviewed fitness to stand trial, *mens rea*, and sentencing issues, among other issues, for an FASD accused.

emerged in the *Gladue* reporting process. Johnson related his experience interviewing Aboriginal community members about a client and the information he received about FASD:

It's interesting, because I've had the experience of being in touch with an Aboriginal service organization out of town for someone, and I knew that we weren't going to be getting a Report for this guy, and I said, any insight that you can provide would be very welcome, and they said, don't quote us, but Fetal Alcohol Spectrum Disorder, FASD, would be something that is a possible area of inquiry for you.

So once we had that, that bigger clue, that was, you know, something very helpful to ... you know, to consider as a possible area to develop for the client. And also, I mean, the Fetal Alcohol Spectrum Disorder is something you do in the questionnaire. And while a client might be able to say, "My mom has been a drinker for as long as I can remember" ... that doesn't take you very far in terms of Fetal Alcohol Spectrum.

When you talk to Mom's sister, and Mom's sister is able to say she started drinking when she was fourteen, and she had your client, Mr. X, when she was nineteen, then all of a sudden the possibility of FASD, the possible relevance of that, increases.²⁹²

Johnson was not implying that this contextual information provides an intimation of a FSAD diagnosis. Rather, the *Gladue* interview questioning and research merely compiles the generational history of parental alcohol use, which can provide more information for the judiciary, especially in the case where any previous FASD testing or reporting does not exist on file. By providing the facts of alcohol usage in a contextual way, it adds relevance to the potential prevalence of FASD without blaming either the parent who drank alcohol, or the child who inherited permanent brain impairment. Discussing FASD within the Gladue Reports allows the condition to be historically contextualized as an imposed symptom while connecting this

²⁹² Johnson, *supra* note 263.

history with present alcohol misuse can be helpful in understanding the use of alcohol as a coping mechanism to mask intergenerational historical trauma.²⁹³

Intergenerational Family History

The inclusion of intergenerational family voices into a Gladue Report is essential to establish a more complete historical representation of the life experience of the client. Although each Gladue Report is unique, Rudin noted that a similar format generally includes, when possible, the introduction of parents and grandparents:

Well, the format, we have a formal introduction and then we usually, as I say, introduce the cast of characters. Here's the person, here's their mother, here's their father, here's their grandmother, here's their grandfather, here's their kid, their siblings and here are their children. And then we try and start the story back as far as we can.

So the story may start with the mother or the father or the grandmother or the grandfather or both grandparents, as far back as we can go. Sometimes the client doesn't enter the story, if you will, until half way in. You know, people are reading this probably going, "But I thought this was about" But you can't understand a person without understanding where they're from.

So we try and tell the story as a narrative and we try and go back as far as we can. ... [W]e always knew that we needed as many voices as we could. And certainly as we started to do it, very quickly it became really apparent. Sometimes we can only have one voice, which is the client's, but those are always, from our perspective, the weakest reports because you need other perspectives.²⁹⁴

Kika' used another fictional example of how relational questioning can be helpful in attaining information about one's parents, grandparents, and ancestors:

²⁹³ For further information on the history of alcohol, First Nations, and its connection to FASD, see Rae Mitten, *Fetal Alcohol Spectrum Disorder: Circles of Healing, Transformation, and Reconciliation* (PHD Thesis, University of Saskatchewan, Department of Interdisciplinary Graduate Studies, 2011) [unpublished].

²⁹⁴ Rudin, *supra* note 237.

So then I'm asking them ... and I do it chronologically. I ask them, "So who is your grandparents? Who is the oldest person you know that's your relative?" Maybe it's their mom, maybe it's their auntie, maybe it's a friend. "Well, what about your grandparents? Do you know who they were?" "Oh yeah, well, I know about them." "Okay, well, what are their names?" And I watch them as they see me draw the genealogy thing or I'll just do a chart; there's grandma, there's grandpa. Then I do the line, "Were they married or just common law?" Then they see me. I let them see that. I actually turn my page over a little bit so they can see that I'm doing this.

And I say, "See, now I need to know who are your parents? Who is your mom and who is your dad?" They would tell me and they'll even be tapping on the table, "Oh no, no ... her name wasn't Mary, it's Marion." "Oh okay." So then we've got those four significant, then I say, "These are your significant others. These are people that are important to you."²⁹⁵

Obtaining the history of the entire family of an Aboriginal person not only gives context to a person's life, but also honours the interrelated kinship family connections and the connections to ancestors that are integral to re-strengthening the health and wellness of an Indigenous person.

Intergenerational Information: Phone Calls

King explained the conversational line of questioning that is useful when acquiring the names of relatives and family phone numbers in order for Caseworkers to follow up on support information for the Gladue Report:

Often times I'll just go through my list and I'll say, "Okay who are your parents?" And I'll ask them if they're still alive and, "Are you still in contact with them?" And if they are, sometimes I'll ask them, "Do you think they'll speak to me about you?" And if they say no, then I'll just go on and say, "Well do you have an aunt or an uncle who you were close to growing up?" And generally we get at least one or two phone numbers. ...

But if there are other family members saying, oh yes, I remember him or her doing that, or even a social worker, or a teacher or a friend, a boyfriend, girlfriend, son, daughter if they're old enough, I tell them, "As many different voices as we can get into this report

²⁹⁵ Mowry, *supra* note 239.

will actually help, it'll help you." And so I try to remind them of that sometimes. And a lot of times it works and they start to realize that, yes it's probably better if other people can back up my stories.²⁹⁶

Intergenerational Trauma

Speaking with relatives, including parents and grandparents, allows essential aspects of a client's life story to be revealed, from positive family stories to painful family and community events that have been transferred down from generation to generation. Intergenerational historical trauma, as Rudin noted, is presented to the judge in a way that simply tells the facts or life story of each generation and the fallout unto the children and grandchildren:

[F]irst we talk to the client, but then we talk to the parent or the grandparent. And so, again, if we start with the grandparent, the grandparent talks about their life and then the parent talks about their life with the grandparent and then the child talks about their life with the parent.

No one talks about intergenerational trauma; they just talk about their life. Intergenerational trauma often becomes evident when you read people's, when you say, "Oh look, I read this, look at what I see." And people aren't stupid. These are not hard things, I'm sorry, it's not always easy, but it becomes evident when you let people tell the story. The other thing that's very helpful when we write these reports is often there will be a member of the family who has been through, or observed, what has happened but are themselves now in a better position. They may have done some healing work, or they were a cousin raised in a more stable family, so they're able to also provide this outside look at the family.²⁹⁷

As confirmed by Kika', the effects of intergenerational trauma usually arise naturally in the conversation when a client is discussing their adult relationships, such as when they are discussing their parenting skills, which they learned from a parent who attended residential school:

²⁹⁶ King, *supra* note 234.

²⁹⁷ Rudin, *supra* note 237.

Now we're moving on to their employment and then into relationships that are adult relationships. And that often leads into being a parent and a discussion of ... it becomes really clear then because the person doesn't know what to do with their child. The woman that they are with gets pregnant. They don't get to be involved with the child, but that's not unusual to them because that was the same thing that happened with their father. So you can see how it has evolved from the residential school impact and not knowing how to parent the children because their systemic parents were nuns or priests and often very exploitive.²⁹⁸

Johnson highlighted the importance of capturing the historic intergenerational effects of residential schools or children's aid involvement in a person's family life story:

[W]henever you can point to that in connection with this person or their parents or their grandparents, that they were in residential schools, and/or there's been Children's Aid Society involved, where the state has been getting involved in taking children out of the family; when they've been cycling in and out of foster care, when they've gone to group homes. ...

So when you're able to say, this person's family, and then their parents and their parents' brothers and sisters. ... So you know, you expand up the family, then suddenly you can provide context on a number of generations. And then when you find out that the family name is X and the aunt's surname is Y, and then you ask, and then you discover because, "Oh well, that's because my aunt was adopted."

And so you'll see, and what I've experienced is, I see families that have come back together and reunited, notwithstanding the fragmentary effect of child welfare intervention, which may have been for very good reasons, but it has the effect of fragmenting families. And I've seen families then seek to reassemble afterwards, and they've got people with different surnames, that have got different surnames because there have been adoptions. So whenever there's something like adoption, then that's extremely vivid. That's a vivid example of family fragmentation at a level a generation above.²⁹⁹

Perhaps most significantly, as Johnson emphasized, the intergenerational effects of residential schools on Indigenous women emphasize the brutal loss of parental skills and responsibilities, and the loss of generationally transferred cultural knowledge:

²⁹⁸ Mowry, *supra* note 239.

²⁹⁹ Johnson, *supra* note 263.

Residential schools have a negative impact on the parenting skills of those that have been taken from their family's communities and forcibly deprived of their culture, the impact of this cascades through generations. And so, questions relating to residential schools have to be explored in connection with a client's parents and grandparents.

And I think that that's particularly relevant to women because of the centrality in Native American culture of women to families. So the treatment that a female client's mother, step-mother, aunts, grandmothers or other women in their ... that they're aware of, is important to explore. Another thing to consider is ... you know, this might explain in a record why you'll see references to sex trade type offences, you know, communicating for the purpose and so on. You're more likely to see that with women than you will with men, and this may be something that the pressure of poverty, which is a Gladue factor—lack of employment opportunity and poverty factors.³⁰⁰

The defence lawyer's observations about Indigenous women and the intergenerational effects that they often experience provide insight into a contextual *Gladue* interview process. He stressed that when a defence lawyer or Caseworker conducts a Gladue inquiry with a female Aboriginal client, it is integral to also inquire into the life experiences of her mother, her aunts, and grandmothers, and, similar to the life experience of Indigenous men, connecting that with the history of discriminatory laws and daily experiences that have had negative impacts on the health and economies of Indigenous women and men in Canada.

Community Recommendations/Aftercare

Community recommendations included within the Gladue Report speak to the heart of the *Gladue* decision. A *wahkotowin*-inspired lens may term a restorative community healing option as a process of decolonization and self-determination of nations, communities, families,

³⁰⁰ *Ibid.*

and individuals. At this time, however, ALST staff, within the confines of a city³⁰¹ and often a far distance from a client's extended family, contemplate a "community plan" that at least explores the healing of the individual within the Aboriginal community that exists within the vicinity of Toronto. As King outlined:

And part of the report as well, there are recommendations at the end. And the recommendations are often recommendations that try to put the person back into the community, whether it's addressing the fact that they drink a lot, so alcohol treatment; or they need a place to stay, the place where they're at right now is not very secure so they need to get into a shelter or some other housing program; if they need more education, if they need any number of things.

So those are included in the report and I think those recommendations go back into the whole intent of the [*Gladue*] decision, which is to keep people out of jail by keeping them in the community and saying the community can help this person by helping them with employment, helping them with housing and helping them with their addiction.³⁰²

The work behind creating that community plan is part of the responsibility of the Gladue Caseworker. Kika' outlined the process of phoning community members to check in about this person's community involvement, while also exploring possibilities for an innovative Indigenous-inspired community sentence:

So family and community, learning about what they are involved in whether they ... if they're lacrosse players or if they're hockey ... I want to talk to coaches, I want to talk to your ... the police that you've been involved with before ... I talk to the police, I talk to the coaches, I talk to the teachers, probation officers, social workers. ...

I do this ... yeah. It's up to me to call this person, that person. ... It's what should be a post-Gladue worker's [Aftercare Worker] position, but we don't have one. Okay, but you're right, I do that. I organize the community, put together a plan of action with them, and then we put it on our recommendations. And I also have to raise enough information

³⁰¹ Kika' worked with Aboriginal peoples in the city, but clients often had a number of relatives on a nearby First Nation. In this case, the Caseworker made calls to the First Nations' community members to ask for their input into a community restorative plan.

³⁰² King, *supra* note 234.

about that ... the community and their program that they're doing to legitimize that they're going to be ... they will effectively do what they promise they're going to do.³⁰³

She added that more resources for client follow-up and aftercare are vital in order for community plans to fully be realized, and without such follow-up, life plans may fall through:

And we don't have the follow-up that is necessary. It is absolutely crucial to have that follow up. And if we don't have that follow up, then we might as well just assume that this person is "on their own." And that's exactly what has led them down the ... wrong road in the first place, is because they're on their own. So I believe absolutely without a doubt in my mind that Gladue writers can ... we can work our tails off, but unless we have somebody who can follow up with them, then we might as well just be ... just wishing. It's the legwork and it's that continual support that's going to help.³⁰⁴

Importantly, Kika' stressed that without any structured and supportive follow-up or aftercare, a client may be in jeopardy once he or she is back in the community.

Summary

Chapter 4 provides an overview of the key themes extrapolated from the interviews conducted with ALST staff and lawyers associated with the Gladue Court in Toronto. After interviewing and transcribing the interviews with those connected with the Gladue Court, I assessed the themes of the interviews, and compiled those that were relevant to *wahkotowin* and the higher intent of *R. v. Gladue*.

A number of key themes emerged from the research data. These include the recommended infrastructure and staff qualifications required for a viable and successful *Gladue* reporting process. One unexpected but essential theme was trust-building and safety between the

³⁰³ Mowry, *supra* note 239.

³⁰⁴ *Ibid.*

Gladue Caseworker and the Aboriginal client in order to create a culturally safe space for personal and intimate conversations. Caseworkers shared that their Aboriginal heritage allowed them both a sincere investment in the process and a sense that they had a deeper understanding of the life experience of the client.

Perhaps the most significant theme is an Indigenous way of listening to and honouring a person's life story. The *Gladue* process of listening and gathering a person's full life story, from childhood to their present adult circumstances, is a process intended to create a sufficient level of safety and trust so that a person will feel comfortable enough to share their story, to be a participant in their own life solutions. The interviews offer a glimpse into a more indirect, relational style of conversing, while also honouring Indigenous values of respecting a relative and helping a relative come closer to living a good and healthy life.

Chapter 5 will outline the interviewing and reporting themes and the *wahkotowin* analysis that can be used as a viable methodology to provide an in-depth social history for a Cree person at sentencing, during their time within the correctional institution, and at the time of their community release. Chapter 5 will further discuss applying a *wahkotowin* methodology to *Gladue* legal obligations during early release policies. The potential for this Indigenous-inspired approach may present an opening for a paradigm shift in the analysis of *Gladue* in the realms of corrections and parole.

CHAPTER 5

GLADUE-THROUGH-WAHKOTOWIN APPROACH

Respect and relationships are not qualities you can measure, and it is difficult to institutionalize them. However, they are the keys to indigenous justice and essential if you wish to incorporate indigenous methods into non-indigenous frameworks.³⁰⁵

The Supreme Court of Canada's *R. v. Gladue*³⁰⁶ decision, when viewed through the lens of *wahkotowin*, may require a conscious paradigm shift for considering the applicability of Indigenous methodologies toward offending behaviours and to healing and rehabilitation. This chapter will consider how the *Gladue* decision can best be analyzed and operationalized through a *wahkotowin* methodology for all offenders, especially, in the case of this thesis, for *Nehiyow* or Cree offenders. *Wahkotowin* can be considered as both a *Nehiyow* law and as a way of being. *Wahkotowin* helps us to remember our human and non-human connections, and our responsibilities and obligations to each other. In understanding how those *wahkotowin* connections were intact prior to settler contact and the way those relationships were systematically broken through violent and destructive legislated programs, we can better ascertain how we can rebuild, reconnect, and thrive again as families, communities, and nations.

As mentioned in Chapter 3, the Supreme Court in *Gladue* presented two propositional duties in all cases involving an Aboriginal person that must be considered:

³⁰⁵ Robert Yazzie, "Navajo Peacemaking and Intercultural Dispute Resolution," in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: BC, UBC Press, 2004) at 114.

³⁰⁶ *Gladue*, *supra* note 1.

(A) The unique systemic and background factors which may have played a part in bringing the particular aboriginal offender before the courts; and

(B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection offender.³⁰⁷

The legal duty set out in *Gladue* to review the social history and background circumstances of each Aboriginal person has a direct correlation with the *Nehiyow* kinship laws of *wahkotowin*. The *Gladue* decision provides an opening to systematically explore, through a *wahkotowin* relationship-based methodological lens, how kinship relationships within the community and family were breached. It would offer an exploration of the intergenerational traumatic effects of colonial history upon their nation, community, families, and individual members, and opportunities to create and manifest healing and self-determination.

In this chapter, I will suggest a *wahkotowin*-inspired approach that can work to more fully operationalize *Gladue* within corrections and parole, and to envision how a *Gladue*-through-*wahkotowin* approach can be applied throughout the criminal justice spectrum, from prevention to sentencing, to carceral programming, to the early release of offenders—in this case, through an Indigenous-inspired approach to Section 84 of the *CCRA*. Section 84 sets out legal obligations for the successful early release of a federally incarcerated Aboriginal offender. At the intersection of federal corrections and parole policies, Section 84 of the *CCRA* focuses on an Aboriginal community's role during the early release of a federally sentenced Aboriginal offender.

³⁰⁷ *Ibid* at 66.

Vision of *Gladue* Through *wahkotowin*

The highest vision of *wahkotowin* when applied to the *Gladue* decision can be termed “*Gladue* through *wahkotowin*,” or healing within Cree communities as facilitated by Cree people. In a recent dream, I envisioned a visual-art piece that depicted the essence of a *Gladue*-through-*wahkotowin* approach. The *Gladue*-through-*wahkotowin* dream presented an image of a braid of sweetgrass. The sweetgrass represented the *Nehiyow* kinship lens of *wahkotowin* and the strength of those kinship relationships. In the dream image, the sweetgrass was placed diagonally and overlaid across a circular image. The circle represented the *Gladue* decision and holistic family and community healing. If we come to understand social history, as mentioned in *Gladue*, through a *wahkotowin* lens, that lens would widen and look at the surrounding world, society, family, and land places that surrounded an individual while growing up. It would tell us how kinship relationships were intact and strong prior to settler contact, and how the strength of those family and community kinship relationships is integral to future wellness. Through a *wahkotowin* lens, we take a wider vantage of social history. Understanding this history from a *wahkotowin* point of view can help all people participating in the *Gladue* process, including the Cree offender and their family and community, to experience Cree ways of healing through the re-building of family, community, and nation relationships, and our relationships with all of creation.

***Gladue* Through *wahkotowin* in Corrections and Parole**

Before applying *Gladue* and *wahkotowin* to a specific commissioner’s directive within CSC’s policy regime, it is imperative to first enunciate how a *Gladue*-through-*wahkotowin* approach would be conceived. The bulk of the *Gladue*-through-*wahkotowin* approach, presented

below, was developed based on the *wahkotowin* teachings offered in Chapter 1 and the qualitative data garnered from interviews with Gladue legal experts working in Toronto. This approach could be more applicable to an urban setting where Cree families are numerous. Since I have located myself in the Prairies, I would suggest that this approach could hypothetically be applied within Treaty 6 territory and in cities such as Saskatoon or Prince Albert. Finally, I would suggest that although I am introducing an Indigenous approach to consider *Gladue* at reintegration, *Gladue* through *wahkotowin* also directly applies to sentencing.

This Cree approach will demonstrate how the *Gladue* principles, through the Cree kinship laws of *wahkotowin*, can be operationalized and applied specifically to the release and reintegration of Cree offenders through section 84 of the *CCRA*. Specific infrastructure will be imperative in order to operationalize the Gladue Report-writing process in tandem with corrections and parole, and could include: an independent agency; staff supervision and training; and professional staff qualifications and experience.

As laid out in Chapter 3, a strong argument exists for *Gladue* factors to be applicable throughout the entire “Aboriginal Continuum of Care”. Specifically, Step 12 of the “Section 84 Guidelines”³⁰⁸ is a valid entry point for *Gladue* principles to be added to the policy directive. Step 12 enunciates procedural steps where *Gladue* principles and Gladue Reports could be added and implemented, including, for example, sub-steps outlining which parties should be involved, and which topics to discuss during release planning. *Gladue* principles could apply to the following sub-steps that outline release planning:

³⁰⁸ Section 84 Guidelines, *supra* note 207 at Step 12.

58. In developing the release plan, the Aboriginal community should consider what type of progress the offender has made to address the factors linked to his or her offending behaviour. The release plan should maintain and complement the work the offender has done in the institution.

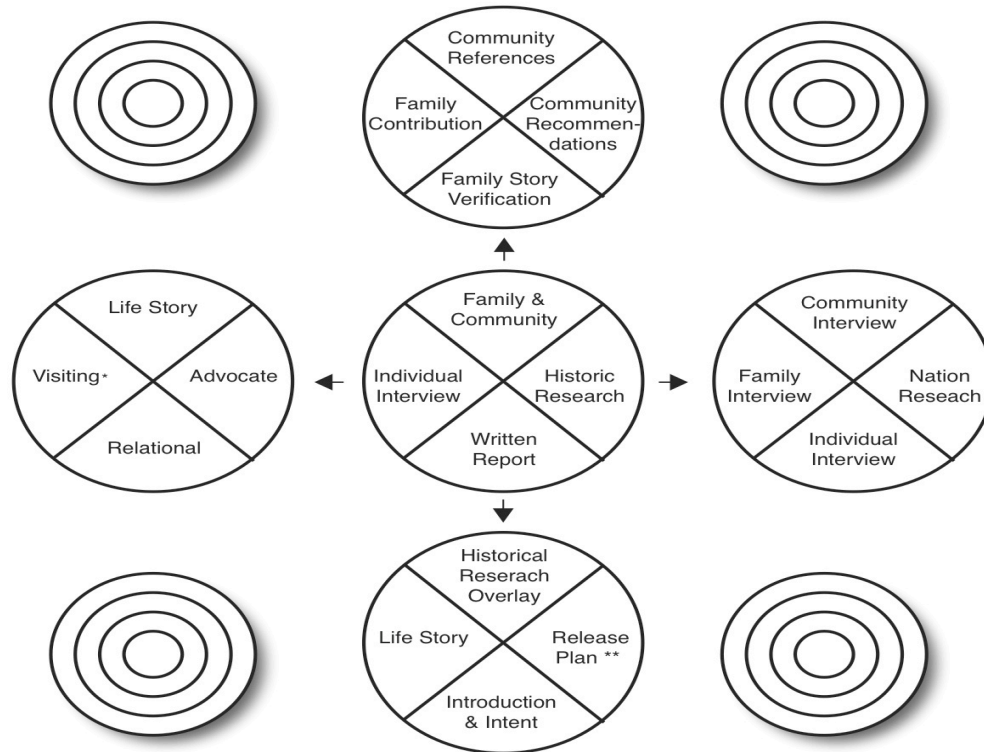
62 The release plan should consider the following elements in the offender's reintegration: a. programs and resources (e.g. Elders, AA meetings and Social Workers); b. employment opportunities; c. accommodations; d. community support; e. safety issues; f. monitoring of offender activities; g. expectations of the offender and the community; h. community attendance at the National Parole Board hearing; i. victim considerations; and j. need for health care and mental health services.

63. Consultation at this stage can result in numerous meetings between the ACDO, offender, ALO, IPO, CPO and the individuals identified in the Aboriginal community to assist with release planning. The consultation can also involve other CSC representatives.³⁰⁹

The key requirements for a *Gladue-through-wahkotowin* approach to be applied to section 84 and the early release of Aboriginal offenders must include a broad and detailed step-by-step approach. As I depict in the *Gladue-through-wahkotowin* approach outlined below, detailed steps are required to properly gather the *Gladue* evidence through individual, family, and community interviews and through historical research. Each step included within the medicine wheel diagram below is inspired by the experience of, and best practices applied by, Aboriginal Legal Services of Toronto. I have translated the interview data using a *wahkotowin* lens to honour those best practices, but to also to honour a *wahkotowin* way of thinking and being. The four key Gladue steps are included in the centre circle, including the written report, the individual interview, the family and community interviews, and the historic research.

³⁰⁹ *Ibid.* Step 12 of the guidelines outlines protocols for release planning and community meetings.

Gladue through wahkotowin: A Cree Approach to Gladue Social History Gathering



*From a Cree point of view "visiting" implies a respectful, relational & conversational approach.

** "Release Plan" in this case, encompasses a community, healing and reintegration approach.

Image 05

The *Gladue-through-wahkotowin* approach includes four circles surrounding the Gladue process steps. These represent the relationship-based teachings of *wahkotowin*, which can be considered at each phase of gathering the *Gladue* life stories of the individual and the stories of their family, community, and nation. Prior to explaining each medicine circle within the approach, I will set out a suggested infrastructure for the success of a *Gladue* process.

Independent Agency

CSC and NPB need to consider that providing expert Gladue Reports is best handled by Indigenous peoples working within independent Indigenous agencies. A fully staffed Gladue team, including elders, a supervisor, several caseworkers, and several aftercare workers, could be located within an independent, urban, Aboriginal non-profit organization, such as an Aboriginal justice organization, or an Aboriginal Friendship Centre. Alternatively, Gladue teams could also be located in more remote locations on-reserve or at regional tribal council offices.

A Gladue team of employees working within an independent Aboriginal agency may be more likely to thoroughly document the accurate social history of an Aboriginal person from a *wahkotowin* perspective. Aboriginal clients generally share more personal information with an Aboriginal staff person who is working for an independent Aboriginal non-profit.

Staff Supervision and Training

The training for the Gladue team members would require an on-the-job approach, which includes reading and writing Gladue Reports and learning relevant community resource options. Caseworkers would receive continuous feedback and editing suggestions from an experienced supervisor. The intent behind the supervisory oversight is to ensure that the Gladue Report information addresses the specified information required by the decision-maker. The supervisor would need to be an expert in the *Gladue* social history factors, the history of Indigenous peoples in Canada, and a knowledge of restorative community options, yet also possess both superior writing and editing skills and the ability to supervise and support staff members.

Professional Experience

In order to uphold this approach, CSC would need to commit to devolving funds to Aboriginal community organizations, such as Friendship Centres, with the intent to hire qualified Gladue teams. The teams could be a group of qualified staff who would operationalize the *Gladue* process. The teams, as mentioned above, should include: 1) elders; 2) supervisors; 3) caseworkers; and 4) aftercare workers. Proper qualifications and professional experience would be required for Gladue team members. Essential qualifications to be held by each team member would include an Aboriginal identity and lived experience, a university education, Aboriginal community work experience, and Indigenous (in this case Cree) understandings of relations and *miyo pimicihiwin*.

Aboriginal identity and Aboriginal lived-experience

An essential quality of a successful Gladue team member is to be an Aboriginal person. On top of a staff member's identity, some lived experience connected with systemic and historical issues commonly experienced by a large number of Aboriginal peoples can be quite helpful when employing a *Gladue* process.

University education

A Bachelor of Laws degree held by an Aboriginal person may be a strong educational asset in completing complex interviews, writing detailed and well-researched Gladue Reports, and assisting in compiling appropriate community recommendations. Degrees in journalism or Native Studies may also lend themselves to effective historical research, report writing, and community planning.

Aboriginal community work experience

Extensive community work experience with Aboriginal peoples in areas such as corrections and the criminal justice system could be extremely helpful in each of the roles envisioned on the Gladue team. Direct community work experience may greatly enhance a Gladue worker's knowledge of Aboriginal community options to support people in their community healing and reintegration plans.

Indigenous understanding of relations and *miyo pimichiwin*

Finally, an essential quality of a Gladue team staff member would include a *nehiyow* understanding of “relations” and a basic knowledge of ways to live a healthy “good life.” If a Gladue team staff member views an offender as not just a human being with potential, but as a person who is looked upon as a respected relative, it becomes possible to assist a person on a much deeper level. The inclusion of elders as part of the Gladue teams—elders who live a way of life that honours Cree relationships and a healthy way of living—would be helpful in assisting offenders to heal their *wahkotowin* circle, including re-connecting elders, or old ones, with young people. Elders and staff members who follow *wahkotowin* would naturally treat a person as their relative and make efforts to find the gifts and talents within a person, helping the offending relative remember their purpose and gifts on their road of life. A Gladue Report written by a Cree person connected to their Cree values and ceremonies can provide correctional and parole officials with unique background information of a Cree offender's life story. By using a *wahkotowin* methodology, the shattering of kinship relationships can be better understood through a *wahkotowin* circle lens, remembering our reciprocal relationships and obligations to

each other: *awasis*, *kaytayak*, *iskewak*, and *nepewak*, and an understanding of the colonial and present-day legal incursions.

Gladue-Through-wahkotowin Approach

After setting out the infrastructure and staff requirements above, the *Gladue-through-wahkotowin* approach, as depicted in Image 5, will also consider optimal measures to best conduct the Gladue interviewing and report-writing process. To illustrate the process, I use four-quadrant medicine wheel diagrams to depict the criteria required for a successful and thorough *Gladue* process. The approach will begin in the centre of the page, with the main medicine wheel consisting of four overarching *Gladue*-process steps: 1) writing a Gladue Report; 2) individual interview; 3) family and community interviews; and 4) historical research. The model begins in the southern³¹⁰ quadrant and continues in a clockwise fashion towards the west. Each step within the medicine wheel branches out into more specific steps, offering considerations that could be helpful when implementing a *Gladue-through-wahkotowin* approach.

Writing a Gladue Report: Structure

The first integral aspect of the *Gladue* process is to outline how the accused's interview data, the family interviews, and the historical research are all compiled together to write a comprehensive Gladue Report. The writing of the Gladue Report involves a general structure,

³¹⁰ I am aware that some nations begin their ceremonies in the east. Beginning in the southern direction symbolically honours the doorway of my teacher's sweat lodge, which faces south. I am also aware of other teachings and traditions in which the sweat lodge faces other directions. I have been taught that when I am visiting other territories, I need to honour the differences within each nation, and the different ways of practicing ceremony within each unique territory.

including: 1) the introduction, which lays out the intent of the Gladue Report; 2) the life story; 3) the historical research; and 4) the community recommendations. The outline offered below maintains the Gladue Report structure that was applied by Aboriginal Legal Services of Toronto to write Gladue Reports at the time of this research project.

Introduction: Intent of the Gladue Report

The introduction outlines the intent of the Gladue Report. The intent is to provide an overview of the person's life, including their family and community, and to offer community recommendations. This section introduces the Gladue Caseworker and also includes the measures used to collect the data, including in-person interviews and subsequent telephone interviews with the client and third parties, such as family and community. Gladue Reports at CSC and PBC could also provide a general outline of the offender, his or her convictions and dates, institutional programming, transfers, and any escorted or unescorted absences prior to release planning.

The Gladue Report is intended to inform and educate all decision makers, as well as the legal personnel working within the criminal justice system. The importance of the Gladue Report's role in the criminal justice process, as suggested by the expert interviews, is to educate decision makers about the history of laws, policies, legislations, and programs imposed collectively and on specific Indigenous nations, and the related intergenerational community, familial, and individual historical trauma and effects.

Life story outline

The next section of a Gladue Report includes a background section that provides the contextualized life story of an individual, including his or her genealogical history, which should be reported as far back as a person can remember. As mentioned in the expert interviews, the life story includes an overlay of relevant historical research, outlining systemic and historic *Gladue* background factors. This information often includes residential school attendance (or the attendance of parents and/or grandparents), childhood experiences both in the home and at school, experiences with poverty and racism, and issues with addictions in their adult family life, and any additional present issues.

By applying a *Gladue-through-wahkotowin* approach to the life story of a Cree offender, questions can be asked based on the *wahkotowin* circle. The Caseworker can converse with an offender about both the positive and difficult relationships they had as children, reviewing all *wahkotowin* relationships: children; the old ones in the community; and with adult women and adult men relatives. Once the childhood years are discussed, conversations can also occur about adult relationships. Have any of the kinship relationships and obligations changed as an adult, including those with children, old ones, or female and male relatives? Where have the breaks occurred? Which relationships have been strengthened? Gathering this information will be an integral part of understanding the kinship relationships that have broken down, which relationships are somewhat tenable or in need of repair, and which family relationships remain relatively healthy and strong.

Conversational questions can also be asked about an individual's *wahkotowin* relationships with, and obligations to, nation, community, and family. Questions can be asked

about where a person is from, which nation or community his or her grandparents are from, which nation or community is each parent from, and from which nation or community, if any, does the offender belong. Discussions can take place about how strongly a person feels connected with their nation, community, and family, and, if they are aware, when and where those relationships may have broken down, or when and where those relationships may have improved over the years. An essential aspect of the process is to also discuss healthy community and family members who helped them through their journey. Discussions can take place about the offender's individual self, asking about positive life experiences, such as sports or creative abilities, to explore their talents and the positive gifts held by each person. As much as possible, Gladue Caseworkers should use the client's words verbatim to honour and fully capture the life story of the client. Alternatively, if an offender is able and interested, he or she could help write out their own story prior to the interview, detailing their childhood, youth, and adulthood, and about their family life and adult life experiences.

Historical research overlay

Historical research excerpts are helpful when included within a Gladue Report. Research documents can provide crucial contextual social history data about the collective experience of Indigenous peoples and the particular historical circumstances of each person's specific nation and community. The historical excerpts or templates cover historical programs or policies that have been imposed nationally against Indigenous peoples in Canada, such as forced land removals, dislocations, or dispersals; the *Manitoba Act*; the *Indian Act*; forced removals of children to residential school, child welfare apprehensions, and adoptions into non-Native

homes; and the subsequent intergenerational effects of destructive historical programs legislated by governments. A *Gladue-through-wahkotowin* approach would gather accurate historical accounts, transcribed from oral accounts or archival and reputable written sources of each particular Cree nation and community. Gathering this history is instrumental in better understanding the intergenerational effects on specific nations, communities, families, and individual Cree persons, and in further re-affirming Cree ways of storytelling and healing.

The *Gladue* social history factors enunciated in the *Gladue* decision, as mentioned above, should be viewed as a non-exhaustive suggested list of historical events and intergenerational effects. The social history factors, however, are more than a mere list of events. The *Gladue* social history is about locating oneself as an Indigenous person, and about reconnecting ourselves with place, memory, stories, and spirit. From a *wahkotowin* perspective, our history and our family are directly connected with the land. We are connected to land where we are from, and even if we have been forcibly removed or chose to leave that place, part of our healing is reconnecting with our spirit, family, and land. As the elders remind us, we are the land and the land is within us. This process can be about helping our relatives remember and reclaim this sacred connection to our history, to the land, and to our ancestors. As further Indigenous scholarship is published that documents more accurate and more detailed accounts of each nation's history prior to and during the colonization process, Gladue teams will be better able to provide corrections officials and parole boards with a more accurate account of the both difficult and proud history of differing Indigenous nations across varied territories.

Community recommendations

The final section of the *Gladue-through-wahkotowin* vision involves the community recommendations to be included in the Gladue Report. Following the lead of the Gladue Reports written by ALST staff, this section should include an outline of all past and present offences, an overview of the person's present circumstances, including place of residence and means of support, and a final paragraph that includes community recommendations. The community recommendation section within a Gladue Report is where both the caseworkers and the aftercare workers could meet with community to help assess what type of options may be available, such as housing or substance abuse treatment, or any family and community resources that can support the individual in his or her healing journey.

Interview with the Offender as Relative: Skills and Style

In order to operationalize the *Gladue* process in order to be applied to federal corrections and parole systems, Gladue team members need to apply effective interviewing techniques to gather the historical factors experienced by the individual offender, as well as his or her family and community, and to help gather ideas for community release options. Using a *Gladue-through-wahkotowin* approach, each team member must have a deep understanding of a Cree-focused relational worldview, and learn how this analysis can be applied to both a relationship-focused conversational interview process and how this relational *wahkotowin* analysis can be applied to a comprehensive documentation process throughout a Gladue Report.

Within the *Gladue-through-wahkotowin* approach, the interview with the offender as relative contains four sub-criteria: 1) relational; 2) visiting with your relatives, 3) life story; and 4) advocate.

Relational: Honouring your relations and trust

The importance of a relational approach is one of the key principles in conducting a successful interview process with an offender. A relational approach espouses the belief that each individual is considered a relative, and, thus, should be treated with the highest respect and honour. It is this “all my relations” approach that can instill a sense of trust into the interview, whereby an offender feels that a Gladue team staff member genuinely cares for them and feels a responsibility to help find solutions and healing options for their life path.

A *Gladue-through-wahkotowin* relational approach is essential for obtaining an in-depth telling of highly personal information about past abuses or talking about what a person considers shameful past behaviours. When applied to newly hired Cree persons on a Gladue team, this relational approach may already be their inherent style, especially if they were raised in, or have learned, Cree ways of being that value treating all peoples as our relatives. In honouring relations, trust will grow between a team member and an offender if the intention is clear that the worker’s role is to guide the offender towards *miyo pimicihiwin*—a good life—by re-establishing the responsibilities and obligations of *wahkotowin*.³¹¹ The intention to build a heartfelt

³¹¹ For an in-depth examination of Cree ways of helping, and Indigenous methods of social work, please see Gord Bruyere, Michael Anthony Hart, Raven Sinclair eds, *Wicihitowin: Aboriginal Social Work in Canada* (Fernwood Publishing, 2009); Michael Hart, *Seeking Mino-Pimatisiwin: An Aboriginal Approach to Helping* (Fernwood Publishing, 2002).

relationship between relatives could result in creating an Indigenous safe space³¹² for more in-depth conversation, leading to a broader scope of personal and background familial and community data for the Gladue Report.

Visiting with your relatives

In honouring a *Gladue-through-wahkotowin* approach for the *Gladue* offender interview process, the second principle involves a caring and respectful conversational style, similar to visiting with a relative. A conversational interview style can be compared to a Cree way of visiting with one's relative, such as over tea at the kitchen table. Despite the fact that the *Gladue* interview has specific goals and a proposed structure, the underlying intent of the interview is to foster a sense of trust and safety within the relationship, which entails conversing with a relative who has come into conflict with Canadian law. This involves talking about his or her ancestral home, history, family relations and family history, and life experiences. The importance of the conversational interview style may foster a sense of comfort and safety, allowing an offender to feel comfortable and relaxed in sharing his or her story.

Life story: Lens of *wahkotowin*

The third element of a *Gladue-through-wahkotowin* interview process, supported by the relational and conversational interview style, is the overarching intention to converse with one's

³¹² See generally, National Aboriginal Health Organization, *Cultural Safety Fact Sheet*, online: National Aboriginal Health Organization <<http://www.naho.ca/documents/naho/english/Culturalsafetyfactsheet.pdf>>. First recognized by Maori peoples in New Zealand, a feeling of cultural safety is an important factor for Indigenous peoples in a counseling environment.

relative about their life story. The life story approach can allow Gladue team members to stay on track within the conversation as they discuss a person's nation, community, and family, and their kinship relationships with children, old ones, women, and men within their family and community. Learning about these relationships, Gladue teams will have a better sense of which specific historic materials to research relevant to a person's nation, community, and family, such as positive historical stories about a person's community, or more inhumane historical references, such as land removals, residential schools, foster care, or adoptions. This life story-telling may also allow team members to gain a good sense of where this person is at, and where they want to go in their life, enabling them to plan for community reintegration. Understanding the social history through the intact circle teachings and the broken *wahkotowin* circles will help team members better understand how the offender's relationship circles may have broken down historically, depending on which nation the offender is from, and what systemic laws and policies were imposed upon his nation and community. The knowledge of the *wahkotowin* circle teachings will also allow the team to gain deeper insight into measures for healing the kinship breakdowns and inherited intergenerational trauma.

Advocate: Guiding the client relative towards *miyo pimacihwin*

The final essential principle of the offender interview, as part of the *Gladue-through-wahkotowin* approach, is the process of guiding a relative towards *miyo pimacihwin*. This Cree concept, generally referring to a healthy and “good way of life,” can influence how a Gladue team interacts with an offender. If each of the Gladue team members, including the elder, supervisor, caseworker, and aftercare worker, take on a Cree-focused advocacy role, it will

involve the active consent and full participation of an offender in planning for his healing activities and recommendations within the community. Advocacy, from a Cree perspective, can be viewed as a shared process that can include discussing all community options that may or may not be helpful for the offender. For instance, as Jonathan Rudin alluded to in Chapter 4, the client may be planning to live in a certain community or reside with certain family members who may or may not support the person's continued healing journey. A caseworker and aftercare worker can review options with an offender and discuss the possible pros and cons of each community option. The relational connection allows for a level of trust for all parties to speak about each community healing option, while also encouraging a safe atmosphere to co-create a healthy life plan.

The *Gladue* interview process involves a back-and-forth conversation where the offender will not be forced to attend a program, but instead the person will be offered a number of healing options within the Aboriginal community. An offender can be given time to consider whether those options would be useful for their future growth and wellness. Finally, the advocacy role can include telephone calls made to the community members and organizations on behalf of the offender to gather all the possible healing options that would benefit their healing journey.

Family, Community, Nation Contact Process: Honouring our Relationships

The third integral aspect of a *Gladue-through-wahkotowin* approach is the Family, Community, Nation Contact process. Contacting family and community members allows extended family to have a voice in the life story of their relative. The process at ALST includes the Gladue Caseworker contacting family and community members, usually by telephone. In

smaller communities, it may be possible to use a *wahkotowin* approach and meet in-person with family and community members to talk about the community reintegration options for their relative. Within the Family, Community, Nation Contact process, four key purposes emerge to strengthen the *Gladue-through-wahkotowin* process, including: 1) family verification of the life story; 2) family additions to the life story; 3) community references; and 4) community healing options.

Family verification of life story

One of the main goals in the Family, Community, Nation Contact process is to telephone or meet in person with family members to discuss certain aspects of an offender's life story. The greater intention of speaking with family members is to help the Gladue team members verify the offender's account of their life story. The verification of the life story strengthens the veracity of the Gladue Report, while also honouring each family member's truth within the Gladue Report.

Family additions to life story

The second goal of the Family, Community, Nation Contact process that works in tandem with family verification is for family and community members to offer any additions to their relative's life story, such as the offender's childhood history and ancestral history, which can be gathered from a parent, sibling, or cousin's perspective. The family can help clarify, from a *wahkotowin* perspective, a Cree offender's history of connection or disconnection with his kinship relatives, including with children, old ones, women, and men within the family and

community. This family viewpoint provides an extra layer to the Gladue Report that can also garner ideas for community release options, such as the possibility of living with relatives before and/or after substance abuse treatment, and potential ideas about the healing needs of the offender and other family members.

Community references

Another goal of the Family, Community, Nation Contact process is to obtain any positive life reviews or reference letters, often provided from community organizations or previous positive community connections held by an offender. Reference letters are used by ALST to bolster the community healing plan, and could be used by the parole board to verify community options that were previously positive and productive for an individual offender, and where he or she might succeed in their present community release plan.

Community recommendations

The fourth, and perhaps most essential, goal of Family, Community, Nation Contact process is to collect feedback from the family, community, and the individual offender about the best community healing options and work-related opportunities that may benefit an offender. Gladue teams can work with the community to assess whether specific services would be a match, and whether these services are available. The best community options would be reviewed with an offender to ensure their consent and participation, and those community work and healing options would be included within the Gladue Report as recommendations.

Historical Research Process

The final integral aspect of the *Gladue-through-wahkotowin* approach is the historical research process, which currently involves the Gladue caseworker conducting research that accurately recounts the histories of Aboriginal nations, including the unique history of specific communities or nations. In the case of a Cree offender, once team members have spoken to both the offender and his or her extended family members, they can choose to use a *wahkotowin* approach when gathering historical written and/or oral history research for the Gladue Report. The gathering of the history can be collected with the *wahkotowin* circles in mind, consciously gathering history experienced by each Cree offender's nation, community, and family, while also taking a contextual approach as the team considers the history of an offender's kinship relationships with children, old ones, women, and men in their families, and in which ways those kinship relationships were negatively affected by colonization. As mentioned above, Cree history-telling often includes both the positive and proud historical stories about a person's nation, community, and family, and also involves stories and historical research detailing the intergenerational destruction that has rippled through each nation.

In order to honour *Gladue's* social history duties through a Cree *wahkotowin* approach, historical research can be guided both by oral history interviews and archival or secondary research. Four sources of history gathering can include: 1) individual interviews; 2) family interviews; 3) oral and/or written community research; and 4) oral and/or written nation research. A *Gladue-through-wahkotowin* approach uses the *wahkotowin* circles as a tool to guide historical research. In applying the *wahkotowin* circle, Gladue team members can ensure that they speak

with the individual and their family and community members about the accuracy of the oral history of a specific community. The individual interview can begin with a consideration of a person's relationships with the inner *wahkotowin* circle—the children—including relationships with brothers and sisters as children, and as an adult, with their present relationships with their own children. The caseworker can review relationships with old ones, discussing the oldest relatives that an offender can remember, including great-grandparents, grandparents, and older aunts and uncles within the community and family. Both positive and difficult relationships can be reviewed. Finally, the caseworker can discuss relationships with female adult relatives, including their mother, sisters, aunts, and can review their relationships with male relatives, including their father, brothers, and uncles.

The individual interview can discuss positive stories attached to their nation and community, and positive stories connected to specific relatives within their family, such as accomplished hunters, tanners, sewers, teachers, lawyers, or role models. As mentioned above, by framing the historical discussion through a *wahkotowin* lens, the *Gladue* history gathering process outlines how laws, policies, and legislation have impacted nations and communities, such as the resulting traumatic residue and violence that shattered the strength of Indigenous families and individuals, while also balancing that with positive stories about relatives.

CSC should consider an amendment to the commissioner's directive requiring that a Gladue Report be prepared at the time of an offender's intake, regularly reviewed throughout the sentence, and revised at the time of release planning. A comprehensive and historical *Gladue* analysis could be applied throughout the Section 84 release planning process, and, most significantly, implemented within Step 12, when contemplating community release planning

meetings for each Aboriginal offender. A series of community meetings or healing circles could occur to discuss the *Gladue* framework of analysis goals—family and community history, and recommendations for a community release plan.

Summary

A shift to a *wahkotowin* way of thinking and being is required to properly listen to the life stories and accurately document the narrative of an Indigenous person's life story from an Indigenous worldview. In order for the vision of *Gladue*-through-*wahkotowin* to best be implemented, infrastructure would need to be in place, including an independent Aboriginal agency and the hiring of several Gladue teams to work within each correctional region, including elders, caseworkers, supervisors, and aftercare workers. A concerted plan to devolve funds would need to immediately take place in order to fully materialize the support required for the release and reintegration of all Aboriginal offenders.

The *Gladue* decision, coupled with the themed data from the *Gladue* interviews and viewed through a *wahkotowin* lens, offers a unique methodology that would apply *Gladue* life history telling to federal corrections and parole generally, and more specifically to an offender's community release planning through the Section 84 early release process. A *wahkotowin* approach that allows us to view a person's life through one's nation, community, and family history, and to understand their kinship relationships to children, old ones, women, and men within the community, would help guide us toward a strong release and reintegration plan within the community.

CONCLUSION

Remembering and envisioning each nation's ways of rebuilding relationships will inspire Indigenous solutions and allow community people to come together to help their own family and relatives. Brenda Macdougall contemplated wider Indigenous conceptions of kinship and family that influence our political and social structures and daily decisions made by families and communities:

Tiyospaye in Sioux, *nkonegaana* in Anishnaabe, *etoline* in Dene, and *wahkootowin* in Cree are all terms that privilege the concept of family relationships that are manifest daily in behaviours, attitudes, and decisions made by individuals, families, and communities.³¹³

Each nation has similar, yet different ways of honouring kinship relationships. CSC and PBC must be cognizant that this thesis merely provides a *Nehiyow* (Cree) worldview that speaks of honouring our obligations to our relationships. Each nation across these lands has their own way, and this way must be honoured and represented so that each individual can heal according to their own cultural ways, and through their connection with their own community, land, and place.

The highest vision for *Gladue* through *wahkotowin* is for healing to occur within Indigenous communities and be facilitated by Indigenous peoples. A practical future vision, in the context of this thesis, includes the completion of a Gladue Report for every Aboriginal person—Indian, Métis, Inuit—who enters CSC at intake. A Gladue Report shall be updated and reviewed at each juncture where the liberty of an Aboriginal offender is at stake, and at regularly scheduled intervals while an offender is preparing for community release. A *Gladue* through *wahkotowin* social history analysis through the *wahkotowin* intact and broken circles, along with

³¹³ Macdougall, *supra* note 62 at 9.

an updated Gladue Report, can occur at all junctures of the correctional process, from intake and programming, to segregation and transfers, to the eventual release and reintegration of each Aboriginal person.

CSC and PBC have made attempts to incorporate the *Gladue* social history requirements into specific policies, but have failed to provide both the practical analytical and operational measures to best gather the *Gladue* evidence and best apply the *Gladue* social history information to correctional decisions. CSC and PBC are legally obliged to implement the *Gladue* principles into all of their policies and protocols when considering the case of an Aboriginal person. It remains unclear whether CSC is offering comprehensive *Gladue* social history interviews, or whether they are offering appropriate healing and restorative solutions within the institution or community. It is also unclear whether the PBC is fully implementing *Gladue* by properly gathering the social history through a Gladue Report for each Aboriginal offender.

Within this thesis, I reviewed key data themes that appear critical for the success of a *Gladue* process. When preparing to physically manifest a *Gladue* history-gathering process, CSC and PBC must first consider the proposition that proper *Gladue* evidence gathering, analysis, and report writing requires an independent staff person who internally possesses and lives according to an Indigenous worldview. I advocate that Gladue Reports can best be written by Indigenous peoples, preferably researched and written by Gladue teams working within an independent community organization.

Revisiting Jamie's Life Story

In concluding the *wahkotowin* vision, process, and approach within this thesis, it may be useful to revisit Jamie Gladue's life story, to assess how elders or future Gladue team members might consider Jamie's life from a *wahkotowin* perspective. I propose that from a *wahkotowin* way of knowing, being, and living, her community would consider Jamie's kinship relationships and think about her life through a Cree lens, from a Cree place, locating her in a specific territory, nation, and respective community.

If Jamie's story were recounted through a *wahkotowin* approach, honouring her relationships and the shattering impact of the systemic policies and legislation upon her *wahkotowin* circles, we would have benefitted from learning about the specific history attached to Jamie's extended family, community, and nation. It would have been helpful to learn about the historic references documenting the history of Cree and Métis nations living on the Prairies, such as the history attached to the events listed on the Broken Circle image (Image 2), and to learn an accurate history of the Métis communities where her family had lived, the specific treaty area that her family was from, the relevant history of that treaty, and the socio-legal and oral history associated with that territory.

If we were honouring the *Gladue* decision and inquiring into Jamie's life and family story from a Cree *wahkotowin* lens, we would be interested in the broader context of Jamie's life story. We would conduct research through the sharing of stories about the history and oral stories of her nations (Cree and Métis communities living in Treaty 8 territory), the specific communities that both her mother's family and her father's family were from, and the history and stories about

her family kinship relationships. We would assess through oral and documentary evidence how the history of colonial laws, policies, and legislation impacted upon her nation, her family and community relationships, and her health and her status and identity³¹⁴ as a Cree woman.

In applying a Cree *wahkotowin* circle approach to an offender being released to his or her community, whether urban, rural or on-reserve, we would reconstruct the relevant inter-relationships as we learn about a Cree offender's family, community, and nation. If a *wahkotowin* perspective had been applied to Jamie Gladue, as I similarly applied to my own life story in Chapter 2, a concerted effort would occur to find community solutions from a *Nehiyow* way, one that potentially could include elders and community members who want to help a young person understand their life and to consider certain areas of discussion.

From a *wahkotowin* perspective, elders, family, and community members may have wanted to discuss specific topics, such as: the oral history of her Cree nation and her Métis nation from that land-specific area; the oral history or elder's version of Treaty 8 and what constituted the unfulfilled or breached treaty promises; the history of the Métis settlements of that land area, including Métis arrivals, dislocations, and dispersals to that land area; Jamie's relationship to her relatives from those specific Métis settlements and to the Cree communities from that area; and the history of those specific settlements. Elders and community members would likely want to discuss more specific topics, such as: the history of Jamie's mother and her Cree family and community, the legal impositions that were placed on Indigenous women from Jamie's family and community, and issues of class, race, and gender politics that affect the

³¹⁴ Prior to 1985, status Indian women who married a non-Indian man lost their status through *Indian Act* regulations, and experienced a number of other losses and exiles, including from lands, families, communities, and nations.

women within her extended family. Community members may also want to understand when and why Jamie's family moved away from her Indigenous community into a non-Indigenous community, how this move affected her entire family, Jamie's relationship (as well as that of her family and community) to the land from that area, and how were those relationships severed by the continued dislocations from territory.

Shanne McCaffrey, in her paper outlining the potential for courts to use Gladue Reports, recognized that the history of the land place that Jamie is from holds importance and is tied to Jamie's identity and personal history. McCaffrey, in her attempts to locate Jamie in place, described the town of McLennan, Alberta:

[It] is a small town nestled close to Lake Kimiwan, about 415 kilometres northwest of Edmonton. There are some obvious Métis settlements in the larger area, like Peavine and Gift lake Métis settlement, as well as First Nations communities like Beaver Ranch, John D'Or Prairie, Fox Lake, and Peace Point. This is a land rich in cultural holdings, which nonetheless bears the scars of communities deeply affected and impacted by the forces of colonization.³¹⁵

From a *wahkotowin* perspective, we would want to deeply understand her relationships with, and reciprocal obligations to, the broad circle areas of nation(s), community, and family.

In honouring a *Gladue-through-wahkotowin* approach, we would want to inquire into the relationships she held with her extended family, including her relationships and obligations to children, old ones, women, and men in the community. How, when, and where did these relationships break down? How did the *Manitoba Act, 1870* and each of the amended *Indian Act* legislations affect her nations, communities, and family? These family and community relationships can be viewed as an integral aspect of the *Gladue-through-wahkotowin* interview,

³¹⁵ Shanne McCaffrey, "Kookum Knew ... Exploring Historical Contexts: Aboriginal People, The Justice System, and Child Welfare" (2010) 1:3 IJCYS 4.

whereby within the interview and the historical research, the Caseworker discusses with the offender where those relationships continue to be strong, and where those relationships have disintegrated or have been nearly destroyed.

Community solutions stemming from *Gladue-through-wahkotowin* do not have to include already-published or already-conceived community-healing options. Other options, from sage picking to cleaning walls or constructing healing centres in every community, are viable. No solution is too big or too small, and no solution is irrelevant. From time immemorial, each nation held laws to maintain justice and stability of relationships within each community.

Gladue through *wahkotowin* needs to be honoured as a process that can readily occur at each juncture of corrections and parole where the liberty of an Aboriginal person is at stake. It is in the best interests of corrections and parole, notwithstanding the best interests of Indigenous inmates, to embrace a paradigm shift that will require less weight given to assessment tools that stem from a medical mental health model and more to an approach that honours a holistic and Indigenous historical understanding of a person's nation, community, family, and life stories.

Keeping in mind the inherent self-determination of Indigenous nations, and *Gladue's* recognition of Indigenous community justice systems, CSC and PBC must become receptive to the future devolution to Indigenous jurisdiction over the healing and reintegration responsibilities for Indigenous peoples. If the authority of the Aboriginal community must first be established with the area parole officer,³¹⁶ we must consider whether that requirement acts in contradiction

³¹⁶ Correctional Service of Canada. *Enhancing the Role of Aboriginal Communities Booklet: Aboriginal Alternatives to Incarceration and Aboriginal Parole Supervision* at 14.

to a nation's inherent authority and self-determination—the right to self-determine the healing of the nation, communities, and families.

It is not known whether federal corrections and parole have the capacity to properly gather, analyze, and implement the *Gladue* social history evidence and apply restorative approaches to all situations where the liberty of an Aboriginal inmate is at stake. A *Gladue*-through-*wahkotowin* approach, or any other Indigenous relational worldview, may not be completely feasible within a carceral institution, yet this does not lessen the legal obligation to properly gather *Gladue* evidence and implement *Gladue* restorative principles.

The present *Gladue*-related policies that have been added to the CSC's commissioner's directives and the PBC policy manual do not overtly specify their method of analysis, which leaves a dangerous gap for staff members attempting to understand and implement the *Gladue* policies. Although the *Gladue* factors listed in the commissioner's directives mention "family" and "community," it still appears that each *Gladue* topic is framed as a closed question, effectively limiting any type of broad, holistic, and conversational discussion of a person's nation, community, family, and personal history.

In the future, a *Gladue* team working at an independent organization could more explicitly implement a *wahkotowin* relational plan. It would take into account the effect of the laws, legislations, policies, and programs on an individual Aboriginal person's nation, community, and family, and the intergenerational inheritance of shattered kinship relationships with, and between, men, women, old ones and children within the community. From a *wahkotowin* perspective, the *Gladue* social history list of questions needs to transform into a detailed set of topics that promote a conversational, relational, and visiting approach to the

Gladue interviewing, researching, and writing process. A *Gladue-through-wahkotowin* approach suggests that the social history factors, such as those listed in Commissioner's Directive 702, should be revised to include the legislated programs and policies historically imposed upon Indigenous nations, communities, and families in Canada, and a more comprehensive list of the intergenerational inheritance of trauma, grief, anxiety, and terror.

Once an accurate history of the laws, legislations, policies, and programs that were imposed on each specific Indigenous nation is better understood and recorded, including the intergenerational inheritance and impacts, a Gladue team can better help create a healing release plan that looks at the needs of the individual, the needs of his or her family, and the larger healing and self-determination needs of the community and nation.³¹⁷

The greater intent of implementing a *Gladue-through-wahkotowin* methodology is to support a method of analyzing the historical evidence that better supports the evidence to be viewed as mitigating factors. If the historical *Gladue* factors are construed as aggravating factors to be added to other risk and need factors compiled by CSC, a Gladue Report could conceivably result in heightening an inmate's security rating,³¹⁸ lessening opportunities to access relevant Aboriginal programming, and diminishing any chances for early release.

Despite the great promise of *Gladue*'s application in federal corrections and parole, I remain skeptical that a true healing paradigm can fully manifest within a punishment milieu. Despite CSC being responsible for the full reintegration of an offender, it may not be best

³¹⁷ The Gladue team that was proposed in Chapter 5 would not be, and cannot be, responsible for finding solutions for the healing and rebuilding of a person's nation or community. A Gladue team, along with the family and community members, can together help assess the best healing and life plans for an offender and for their family.

³¹⁸ Hannah-Moffatt, *supra* note 227.

equipped to implement holistic healing and integration community plans for Aboriginal offenders. Even if staff members personally identify as an Aboriginal person, can corrections or parole officials guarantee that these staff members have an Indigenous relational worldview, such as *wahkotowin*? Analyzing *Gladue* from an Indigenous perspective is dependent upon an Indigenous worldview.

A *Gladue*-through-*wahkotowin* approach can be best applied through an independent organization by Indigenous peoples for Indigenous peoples. The healing process of a community will occur within and by the community. Each Indigenous nation, such as *Nehiyow*, Dene, or Dakota, will continue to self-determine their own healing path, offering their own unique ceremonies and facilitating the health, healing, and continued survival of their relatives.

After meeting the ALST staff who work with the Gladue Court, it became apparent that they are trailblazers in terms of their research of documented history relating to each Aboriginal accused's community history, as well as their family and life story, which they obtain through comprehensive interviews. Although ALST does not explicitly frame their Gladue Report through an Indigenous relational lens, such as the Cree laws of *wahkotowin*, it is apparent that ALST Caseworkers make a concerted effort to include the full life story of each individual, supported by information about a client's extended family and community, and supported further by the inclusion of global issues affecting Aboriginal peoples across Canada. Caseworkers also create a unique relationship with the client and, although not explicitly so, appear to treat a client as a fellow Indigenous relative—a person whom they are guiding toward an Indigenous concept of a healthy “good life.” This may be the best possible outcome for an urban Aboriginal-run organization that is completing Gladue Reports.

Using the Cree relational approach of *wahkotowin* within the *Gladue* process, the four interrelated realms of historical information can be covered simultaneously in order to honour a Cree way of understanding the issue, considering nation, community, family, and self. This historical information incorporates the life stories obtained in the one-on-one and family interviews, which can include discussions about the relationships within a person's family, during their childhood and adult years, including key kinship relationships with children, old ones, women, and men within their family and community. The *Gladue* social history is about locating oneself as an Indigenous person, and about reconnecting ourselves with place, memory, stories, and spirit. From a *wahkotowin* perspective, the *Gladue* process is representative of part of our healing, part of reconnecting with our spirit, our family, our history, and the spirit of the land.

As we have learned from the *Gladue* expert interviews, community healing plans and the follow-up work with an Aboriginal person is an integral aspect of the *Gladue* process, and requires proper support and funding. If CSC does not create a devolution plan to financially support Aboriginal-led community healing and reintegration planning, can a *Gladue-through-wahkotowin* vision be properly employed within a non-Indigenous institution? Can a *Gladue-through-wahkotowin* approach be implemented within the institution that has systematically lessened the chances of release of Aboriginal inmates through 1) discriminatory policies; 2) policies applied in a discriminatory way; or 3) policies effectively equaling a negative result?

This thesis supports all the Correctional Investigators' recommendations, especially recommendations 6 and 7, which respectively call for a drastic improvement to the Section 84

reintegration process and the recommendation for in-depth staff training in order to uphold the legal duty to properly collect *Gladue* evidence for all Aboriginal offenders:

6. CSC should thoroughly review the process for Section 84 releases with the goal of significantly reducing red tap and accelerating the process.

7. CSC must expand its staff training curricula to include in-depth training about Aboriginal people, history, culture and spirituality for all staff, including training in the application of Gladue for all staff, including training in the application of Gladue principles to correctional decision-making. This training should not just be “one-offs,” but rather ongoing training provided throughout an employee’s career.³¹⁹

The Correctional Investigator clarified that Section 84 needs to be re-formulated.³²⁰ He was also clear that the *Gladue* principles are not well understood, and that when the *Gladue* factors are applied they are at a high risk of being misapplied, potentially resulting in a higher security classification and limiting opportunities for Aboriginal programming.³²¹

I recommend a best-practices approach that can best be implemented by independent Aboriginal agencies to conduct interviews, write Gladue Reports, and maintain follow-up in the community. I recommend a devolution plan to be implemented immediately—one that supports a holistic vision that incorporates the hiring of Gladue teams in urban centres where Aboriginal offenders are most often released. Gladue teams would consist of elders, supervisors, caseworkers, and aftercare workers, and be responsible for assisting and facilitating the healing, reintegration, and strengthening of relatives through a vision of rebuilding *wahkotowin*: self, family, community, and nation. The *Gladue-through-wahkotowin* vision that I propose in Chapter 5 has the potential to be applied to all realms of the criminal justice system, from

³¹⁹ Sapers Report, *supra* note 209 at 34–35.

³²⁰ *Ibid* at 24–26.

³²¹ *Ibid* at 28–29.

prevention and sentencing, to carceral programming, and the reintegration and healing within the community.

As I finalize this thesis, I am called back to the reason that I was originally attracted to the Supreme Court's *Gladue* decision. At the heart of the decision is the life story of a young Cree Métis woman named Jamie Gladue and a call to consider Indigenous ways of being, thinking, and healing. From a *wahkotowin* perspective, this woman is my sister, for we grew up relatively nearby each other on the Prairies. Although a number of life experiences within our lives may have been dramatically different, through the veins of our Prairie history and the history of our Cree and Métis ancestors, her pain is my pain, and her healing is my healing. This thesis is a commitment to that resurgence of Indigenous ways of healing and justice. At the time of writing the closing of this thesis, criminal justice officials are re-conceptualizing new visions for the release and reintegration of Indigenous peoples, while Indigenous nations are reasserting their territory, languages, and cultures. Men, women, old ones, and children are coming together, and each *wahkotowin* circle is gradually, but inevitably returning to its strength, returning to the respectful care for and obligation to each other and all of creation.

APPENDIX A
CONSENT FORM

Re: Consultant/ Expert - Letter of Invitation

I would like to humbly invite you to consider sharing your expertise in research that I am completing relating to the Federal Correctional system and parole process.

As a part of the requirements for completing a Masters of Law at the University of Saskatchewan, I am completing a thesis on Federal Parole process and Indigenous Peoples, specifically researching s. 84 of the *Corrections and Conditional Release Act* when an Aboriginal person is returning to their community.

Research Explanation:

Section 84 of the *Corrections and Conditional Release Act* [CCRA] will be examined and question whether Corrections Service of Canada's [CSC] Community Release Agreements are consistent with Indigenous Justice values and methodologies.

Section 84 was designed by CSC as a means for an Aboriginal community to take on the jurisdiction to supervise an offender upon his or her parole release. An examination of the policy is critical to determine to what extent the policy is being implemented and by which standards is it employed, and whether these community release plans/ community releasing circles are benefiting persons on parole and their respective communities.

I will examine s. 84 documentation and procedures within the CSC institutions, examine National Parole Board decisions related to s. 84, and interview experts/ consultants knowledgeable in the field, including staff of two penitentiaries, five healing lodges, and members of a Community Justice Committee at one First Nation in Saskatchewan.

I expect that interviews will commence in August of 2010 and will be finalized by May of 2011. An interview with each expert will likely take 1 hr and can occur in more than one sitting. Research Ethics Approval from the University of Saskatchewan has been approved. I can be contacted by phone at ____ or by email at ____.

Sincerely,

Anna L. Flaminio, B.S.W., L.L.B.

CONSENT FORM

You are invited to participate in a research project entitled Federal Parole Processes and section 84 of the *Corrections and Conditional Release Act* within Treaty 6 territories. Please read this form carefully, and feel free to ask questions you might have.

Researcher: Anna L. Flaminio, College of Law, University of Saskatchewan.

Purpose and Procedure: The purpose of the research is to examine Section 84 of the *Corrections and Conditional Release Act* [CCRA] and question whether Corrections Service of Canada's [CSC] Community Release Agreements are consistent with Indigenous Justice values and methodologies.

Section 84 was designed by CSC as a means for an Aboriginal community to take on the jurisdiction to supervise an offender upon his or her parole release. An examination of the policy is critical to determine to what extent the policy is being implemented and by which standards is it employed, and whether these community release plans/ community releasing circles are benefiting persons on parole and their respective communities.

I will complete a literature review of relevant books and articles, examine s. 84 documentation and procedures within the CSC institutions, examine National Parole Board decisions related to s. 84, and interview experts/ consultants knowledgeable in the field.

The findings of the research will be compiled into a Masters of Law thesis and be distributed to the College of Law and to the College of Graduate Studies and Research at the University of Saskatchewan. Findings may also be reported in journal articles, and conference presentations. Data will be reported both in a summarized form and in the form direct quotations, with the prior informed consent of the participant.

Potential Benefits: The research may be of potential benefit to the wider Canadian Justice community, the Prairie Region of Corrections Canada, specifically to Corrections procedures within Saskatchewan and Alberta community, while also being of potential benefit to Aboriginal corrections, restorative justice and community corrections. These benefits are not necessarily guaranteed.

Potential Risks: As participants are generally experts and professionals within the field, I do not anticipate any potential risks, solely to protect any Indigenous Knowledge shared when interviewing Elders and ensure proper ownership, while also ensuring whether certain sacred cultural Indigenous Knowledge can or cannot be shared with the broader public.

Storage of Data: In the case where the data collected contains identifying information (e.g., interview tapes with contact information), data will be stored in a locked storage file cabinet during the time of the research. Data will be securely stored for a minimum of five years by the Research Supervisor, Professor Norman Zlotkin, at the University of Saskatchewan, College of Law building, in Saskatoon, Saskatchewan, Canada.

Confidentiality: Legal names will not be used unless the person interviewed asks for their legal name to be used for a relevant purpose. All information shared will be held in strict confidence unless free, prior informed consent is obtained from the participant to include any information shared in the thesis.

Right to Withdraw: Your participation is voluntary, and you can answer only those interview questions that you are comfortable with. There is no guarantee that you will personally benefit from your involvement. The information that is shared will be held in strict confidence and discussed only with the research team. You may withdraw from the research project for any reason, at any time, without penalty of any sort. If you withdraw from the research project at any time, any data that you have contributed will be destroyed at your request.

Questions: If you have any questions concerning the research project, please feel free to ask at any point; you are also free to contact the researcher at the number provided if you have other questions. This research project has been re-approved on ethical grounds by the University of Saskatchewan Behavioural Research Ethics Board on July 9, 2010, and will expire on July 09, 2011. Any questions regarding your rights as a participant may be addressed to that committee through the Ethics Office (966-2084). Out of town participants may call collect.

Follow-Up or Debriefing: You can call the researcher at ____ or at ____ if you would like to access the completed thesis or discuss any aspect of your interview or any aspect of the research.

Consent to Participate: I have read and understood the description provided; I have had an opportunity to ask questions and my/our questions have been answered. I consent to participate in the research project, understanding that I may withdraw my consent at any time. A copy of this Consent Form has been given to me for my records.

(Name of Participant)

(Date)

(Signature of Participant)

(Signature of Researcher)

APPENDIX B

INTERVIEW QUESTIONS

ALST Supervisor, Jonathan Rudin, Questions 01—25 August 2010

1. How was the Gladue Court set up post 1999? What were the most important considerations in order to honour the decision, while making the principles operational on the ground?
2. What measures/questions are used to ask clients about social history considerations? In the history of the court, how did the team assess which questions/ themes/ history were important to gather for the Gladue Report in order to encompass the history of colonization in Canada?
3. What are considered the essential personal and professional background factors that are needed by Gladue Caseworkers?
4. What type of training is provided to Gladue Court workers and judges to ensure they understand a) the full Gladue expectations, and 2) the accurate history of Aboriginal peoples in Canada?
5. Explain the role of Supervisor of the Gladue Case Workers and why it is a necessary component? What type of feedback is most commonly provided to the workers by the Supervisor?
6. In what ways does the Gladue Report differ from Risk Assessment analysis?
7. What is the Court's experience with policy changes related to the incarceration/ release of Aboriginal offenders (bail)?
8. Is there internal ALST policy that makes Gladue procedures uniform and consistent? Is there a Gladue Court written policy/procedures manual? What are unique policies that have developed through the Gladue Courts? How are the judges influenced by these policy changes in their sentencing of Aboriginal peoples?
9. How were connections initially made with organizations that might be open to offering diversion/ non-carceral options?
10. What were the most important resources that were needed for Aboriginal clients?
11. How much time is needed for each client to devote to their diversion plan?

ALST Supervisor, Jonathan Rudin, Questions 02—12 April 2011

1. Outside Agency – What would be the criterion for an independent agency? How would relationship work on the ground?
2. What is the most important background/ training of Gladue Caseworkers?
3. What are associated costs and who is responsible?
4. Gladue Report – what are the key Gladue factors 1) colonial impositions, 2) effects, and 3) intergenerational effects
5. How and where could Report findings be used within CSC/ Parole decisions and how social history can be promoted as mitigating factor as opposed to further aggravating?
6. Gladue as a “Process” – how do you train workers to understand Gladue as a process? For worker and for client: engaging client to think about their lives/ asking family about their lives/ adding historical context.
7. How to present “judicial notice” of history of colonization as common knowledge. What are main texts, ex) RCAP?
8. How to balance history as mitigating factor with taking responsibility through cultural programming within institution/ cultural indigenous justice in community?

Gladue Caseworker Questions—2010

1. CSC is required to adhere to *Gladue* principles. However, CSC policies do not indicate how CSC staff are supposed to consider *Gladue* principles when making decisions involving Aboriginal offenders. How are these good intentions to be operationalized?
2. What training is provided in these complex principles to staff?
3. What are the goals of the Report, as you see it?
4. What's your knowledge of /training related to the Gladue decision? What guidelines are given in the decision that helps you complete the report, in terms of being aware of the spirit and intent of the decision?
5. What specific questions/ themes do you try to ask the individual to get at the unique systemic factors?
6. What special measures do you use to gather the most detailed information from the person? [rapport, interview location, re-wording questions, etc)
7. What strategies are used to help gather further information from the family and community?
8. How much time does it take to complete the research? And to write the entire report?
9. What is your personal and professional background that you feel helps you complete quality interviews with the person?

Gladue Crown Questions—2010

1. When you have an Aboriginal client, how does your responsibility, as deemed by the Gladue decision, translate into everyday action?
2. In which ways does the *Gladue* requirements now change each stage of the criminal court process? What do you find are key differences between regular Court and Gladue Court in terms of its treatment of Aboriginal offenders by judges, and defence?
3. How does Crown's role change in Gladue Court in comparison to usual criminal Court?
4. What is differences between the Old Court and College Court house?
5. Does Crown Counsel working within the Gladue Court obtain training about the extensive history of colonization with Canada and its many effects on Aboriginal people?
6. What have you learned most about what occurred to people at residential schools and its intergenerational effect?
7. What's your experience with FASD/ mental illness of accused and its connection to the historical factors of Aboriginal people?
8. Are there any differences in how you deal with cases with Aboriginal women, in consideration of any different history/ oppression?
9. What have you learned about the effects of sexual abuse? The effect of losing one's children to the Children's Aid system?
10. As the Crown, how does the Gladue Report highlighting the background and circumstances of the offender, affect your role/your strategies?
11. What key differences do you see in the Gladue Report versus the PSRs?

12. In what ways have you built relationships with the Gladue Court staff and why might this be important for your work?
13. How is the relationship with Defence counsel unique in the Gladue Court?
14. What are the pros and cons of incarceration vs. community options for specific charges/circumstances?
15. Where have you seen the greatest success in using community options and how has it seemed to change a person?

***Gladue* Defence Counsel Questions—2010**

1. When you have an Aboriginal client, how does your responsibility, as deemed by the *Gladue* decision, translate into everyday action?
2. As defence counsel how do you go about bring that person's background and circumstances to the Court?
3. How does defence counsel best go about learning about the extensive history of colonization with Canada and its many effects on Aboriginal people?
4. Any differences in how you deal with cases with Aboriginal women, in consideration of any different history/ oppression?
5. In which ways do the *Gladue* requirements affect/change each stage of the criminal process?
6. How do you go about creating safety so that a person feels comfortable telling you their life story?
7. How did you initially go about gaining knowledge about the history/inequality of Aboriginal people in Canada?
8. How did you go about researching community restorative resources in the community and how do you keep up to date with what is available?
9. What do find are key differences between regular Court and Gladue Court in terms of its treatment of Aboriginal offenders by judges and lawyers?
10. If a judge is requesting a Gladue Report, how do go about advising your client about their rights?
11. In what ways have you built relationships with the Gladue Court staff and why might this be important for your work?

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